MG&C NEWS

Spring 2007 McAngus Goudelock & Courie, LLC & MG&C Consulting

Top 10 Hot Topics For Employers To Consider In 2007

By: *Kris Cato*, MG&C

1) Effective January 1, 2007, North Carolina's minimum wage has increased to $6.15 per hour. The federal minimum wage and South Carolina's minimum wage remain at $5.15 per hour.

2) Employers should be careful about making any deductions or even "threats" of deductions from salaried exempt employees' pay for lost or damaged property, repayment of debts to the company, and/or partial absences. To do so could result in a loss of the exemption from overtime requirements and result in substantial back pay liability for overtime worked by those employees.

3) Employers should review any noncompete covenants they have in effect with employees and be sure that they comply with the applicable state law and to make sure they are enforceable.

4) Employers should make sure that their FMLA policies alert employees that FMLA leave runs concurrently with workers' compensation leave and other paid or unpaid leave.

5) Employers should make sure that they have an anti-harassment policy and that they train their managers and supervisors annually regarding the laws relating to harassment and discrimination.

6) Employers should have all their policies and procedures reviewed this year to make sure they accurately reflect the way the company operates its business and are compliant with state and federal laws.

7) Employers should have all pay practices clearly defined in writing to avoid claims of back pay after employees have been terminated. Vague, undefined practices lead disgruntled employees to seek back pay and attorney's fees.

8) Review all employment contracts to determine where updates may be needed.

9) Conduct informal perception surveys with employees to determine their morale and identify areas of improvement.

10) Consult with counsel whenever you consider making any employment-related decisions to ensure that all legal and practical factors are considered, in order to limit your legal exposure and liability.

Procurement in South Carolina: How to Successfully Compete for Government Contracts

By: *Jill Benson*, MG&C

Procurement is the process by which government contracts are solicited and ultimately awarded to a successful bidder. The South Carolina Consolidated Procurement Code governs this process by establishing guidelines to ensure fair and unbiased competition and providing legal remedies for aggrieved parties. As a player in the procurement process, you should become familiar with the common obstacles presented to bidding parties or offerors.

The designated government agency begins the process by soliciting offers to contract for a good or service. The published solicitation, also known as the Invitation for Bids ("IFB") or a Request for Proposals ("RFP"), establishes the rules and guidelines for participating, explicitly states the information to be included in the bid, and provides a detailed description of the service or item sought. At this point, you will want to have a good understanding of the agency's needs and desires for the contract in order to best prepare your proposal. This requires extensive planning and attention to detail. Any error, although small, can prove fatal in your effort to be the most responsive offeror. For example, any material detour from the RFP or IFB renders the proposal non-responsive. An award cannot be given to an offeror unless the bid is both responsive and responsible. Simply put, your proposal must conform in all material aspects to the RFP or IFB to keep you in the running for an award. Failing to adhere to the RFP or IFB is a mistake that can be easily avoided. You should establish a system for evaluating the essential requirements of the RFP or IFB in order to best prepare your proposal.

Once proposals are completed and submitted to the governmental body, they are opened and evaluated based upon several criteria. The government must evaluate each proposal based upon the criteria outlined in the RFP or IFB. Typically, the scores for each offeror are calculated and the offeror with the highest score has the winning bid. However, negotiations ultimately determine which offeror receives the award. Even though an offeror's proposal has the highest score, it may not be awarded the contract if negotiations fall through.

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MG&C Events Near You!

SCDTAA Oysters & Cocktails Event
Columbia, SC
April 10, 2007







Procurement in South Carolina: How to Successfully Compete for Government Contracts

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Negotiations present another hurdle that must be overcome before receiving an award of the contract. It is in this phase that your bid is either accepted or denied. Having an experienced legal team is crucial to successfully negotiating your bid. Through negotiations both parties reach an agreement concerning the final terms of the contract. Once a contract is reached, the government publishes a Notice of Intent to Award the contract to the successful offeror.

Although an award has been published, aggrieved offerors may protest such an award pursuant to the Consolidated Procurement Code. The protest is initially before a Chief Procurement Officer ("CPO"), but his or her decision may be appealed to the Procurement Review Panel ("Panel"). Ultimately, an aggrieved party may appeal the Panel's decision to the Circuit Court.

Important guidelines must be adhered to in the protest of an award. For example, the content of an initial protest letter is very important for issue preservation upon appeal to the Panel. In addition, there are very strict deadlines for filing protests and subsequent appeals. You can avoid easy mistakes in your appeal to the Panel simply by understanding these rules and deadlines. Therefore, in the event that you become involved in a protest, you will need to have counsel that is familiar with such restrictions.

The procurement process can be confusing and frustrating even for the most experienced business professional. Let our specialized knowledge and experience at MG&C help you through this difficult process. Furthermore, our Consulting team can assist you by identifying opportunities and providing the necessary background information and advice to enhance the effectiveness of your sales team. Within the strict guidelines of the Consolidated Procurement Code, MG&C Consulting can introduce you to key decision-makers, assist with evaluating the RFP or IFB, and review your proposal for responsiveness and conformity with the local environment.

MG&C's legal team consists of experienced attorneys who are prepared to represent you from the very beginning by assisting in the drafting of your proposal to representing your interests during contract negotiations. Additionally, we can represent you with the defense or prosecution of a protest and subsequent appeal.

The Truth About Title Insurance

By: David Ross, MG&C

For all those who think that title insurance is not needed in the real estate industry, think again! Title defects are out there and pose a bigger threat than you might think; according to the American Land Title Association, over $787,075,613 in claims were paid out by title insurance companies in 2005 alone.

All lenders require a buyer to purchase a policy on their behalf if the amount borrowed exceeds a certain amount determined by each individual institution. You have no choice in purchasing this policy, if the lender requires it, then you must purchase it to receive the loan.

What many homebuyers do not understand is that although they pay for the lender's policy, it is purchased on the institutions behalf and ONLY benefits the lender. The coverage under this policy is limited to the loan amount and is reduced as the principal loan amount is paid off. This means that if you do not finance 100% of the purchase price, then the entire value of your home will not be covered under the lender's title insurance policy. Even if you have financed 100% of the purchase price you are only safe until your first payment is made because as you knock off principal, you are also knocking off coverage. Once the loan is paid off there is no more coverage under the policy (zero, zilch, nada)!

This is why it is very important for a homebuyer to purchase not only a lender's policy, but an owner's policy as well. The owner's policy protects the equity that you have invested in your home. For example, let's assume 10 years from now, that you have an outstanding balance of $50,000 on a loan that was used to purchase a piece of property for $150,000. If a title defect is discovered and you only purchased the lender's policy, you are only covered for the $50,000 that is left on the loan. You lose $100,000 worth of equity. However, if you had purchased the owner's policy when you purchased the property, $50,000 would be covered to pay off the lender and $100,000 would be available through the owner's policy to pay you for the equity that you put into the property.

Owner's title insurance is paid for through a one-time premium at closing that covers the purchaser for as long as they own the property. It provides a very simple solution to what can turn out to be a very big problem!

South Carolina Legislative Update

By: *Hope Lanier,* MG&C *Consulting*

March 26th marked the half-way point in the 22-week South Carolina Legislative Session which will continue through Thursday, June 7th. It has been a busy session so far, with a variety of legislative proposals on the table of consequence to our clients. The annual budget process is well underway, with lawmakers working to allocate $7.3 billion of state revenues for the 2007-08 Fiscal year. Among the other "hot topics" on the table at the General Assembly, the following initiatives are certainly on our list of issues that are worth watching:

1. Workers' Compensation Reform

Workers' compensation reform efforts began in the Senate during the summer months last year after a House-passed proposal failed to pass during the last session. This session, the Senate has led the charge moving legislation forward, although many in the business community remain very concerned about the direction and substance of the current proposal. On the table: the possible overturning of several court cases the business community considers egregious, significant changes or even the elimination of the Second Injury Fund, and the adoption of stricter guidelines for use by Commissioners when making injury awards.

2. Reform of the Department of Transportation

After the release of a scathing report from the Legislative Audit Council, tough hearings before several members of the House and Senate, and the departure of the Executive Director, the State Department of Transportation is poised for a significant reorganization both in terms of structure and function and in the way the Department's leadership is appointed. This could come as part of the State Budget or as stand alone legislation, but odds are that a reform bill will make its way to the Governor's desk before the Legislature adjourns.

3. School Choice/Vouchers

Among the more polarizing issues to come before the General Assembly in recent years, the School Choice and School Voucher debate is set to rise from the ashes once again this year, although in a modified format that has attracted more supporters than in years past, at least in the House. With strong opinions among fans and foes alike, both sides have raised valid concerns, and both also claim to have the requisite number of votes needed for a victory. Supporters of the legislation have treated this like a marathon rather than a sprint, and after two years of the debate, the State Department of Education has responded with its own Choice Plan that will be debated as a separate "open enrollment" bill. With so many options and strong opinions in the fight, the only thing that is certain about the so-called "Put Parents in Charge" legislation is that the debate will be as colorful as the box of 64 Crayons in any South Carolina classroom.

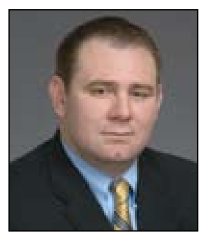
4. Alternative Energy

With increased scuttlebutt about global warming and alternative fuels, many in South Carolina have high hopes that the state will help lead the nation into the Hydrogen age. Ironically enough, it is business leaders and eager entrepreneurs rather than traditional environmental activists who have been most successful in their recent efforts to open the door to a new energy future by encouraging "green" buildings, offering tax rebates to consumers who purchase hybrid vehicles and providing the funds and framework to support research on hydrogen fuel cells – all proposed as part of legislative proposals that have been introduced in the SC General Assembly this year. Paired with ongoing efforts to fuel the state forward with domestically produced energy sources, Legislators are primed to consider a broad array of energy proposals this session, with an eye toward the development of a comprehensive state energy plan.

5. Cigarette Tax Increase

A coalition of health professionals, hospitals and non-profit organizations are targeting South Carolina's lowest in the nation cigarette tax, asserting that it could be time for that distinction to go "up in smoke." Legislators are considering a proposal to increase the tax to 37 cents - up from the current 7 cents per pack. They believe the move will deter some smokers while providing funds to support youth smoking prevention and cessation and to increase the availability of Medicaid. To counter the tax increase, proponents are also considering a companion initiative that would decrease the state food tax by 1.5 cents. The bill would also require tax stamps on each pack of cigarettes to help prevent the increasing problem of smuggling to states with higher taxes. Not surprisingly, the proposal faces significant challenges, with strong opposition from both cigarette makers and marketers as well as concerns from lawmakers who have pledged to support "no new taxes."

MG&C Welcomes New Attorneys



David Ross joined the firm's Columbia office in March. His areas of practice include residential and commercial real estate, commercial transactions and business formations.

David graduated from the University of South Carolina with a Bachelor of Arts degree in history and received his Juris Doctorate from the USC School of Law. He served as a law clerk for the Honorable L. Casey Manning of the Fifth Judicial Circuit. David is a member of the South Carolina Bar Association, the Columbia Homebuilders Association, and the Greater Columbia Association of Realtors.

Richele Taylor joined the firm's Columbia office in March. Her areas of practice are Elder Law, Long Term Care Planning, Estate Planning, Probate Administration, Guardianships and Conservatorships, and related Probate Law litigation. Richele represents clients in a wide range of issues in this practice area. Throughout her career, she has focused on Elder Law and government benefits issues such as Medicaid, as well as litigation and healthcare issues.

Richele graduated from the University of North Carolina at Chapel Hill with a Bachelor of Arts in English. She received her Juris Doctorate from the University of South Carolina School of Law where she served as an Associate Articles Editor for the South Carolina Law Review. Richele is a member of the South Carolina Bar Association, the Richland County Bar Association, and the Lexington Chamber of Commerce. She is also admitted to practice in the United States District Court for the District of South Carolina. Richele is a member of the National Academy of Elder Law Attorneys (NAELA) and previously served as the legislative liaison for the South Carolina Chapter. She is a frequent lecturer on topics such as Probate and Estate Planning, Elder Rights and Benefits, and Medicaid.

Estate Planning Tips

1) Do you know where your original will is located? Was it properly executed in front of two non-related witnesses? A properly executed original will must be located and filed 30 days after death with the Probate Court in the county where you are domiciled.

2) If your original will is not probated within ten years from date of death, then you will die intestate and the Probate Court will determine your statutory heirs as of death through a proceeding called a Petition to Determine Heirs, which can be costly and time consuming and requires an attorney in most counties.

3) A fiduciary bond may be required to protect your assets if you die without a will. This requirement may be waived by your intestate heirs if all are in agreement.

4) The original will should never have outright bequests to minors. You should make sure that you create a trust for minors to extend distributions to eighteen years of age and beyond.

5) You should not name minor children as beneficiaries of life insurance or retirement accounts. Utilize a trust for the benefit of children as the beneficiary of life insurance or retirement accounts to properly manage the funds and extend distributions to 18 years of age and beyond.

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DID YOU KNOW?

Tommy Lydon, a member of the firm's Columbia office, has competed in over thirty triathlons including two half ironman distance races.

Websites of Interest

CHECK THESE OUT!

www.richlandonline.com/departments/probate/guardianship.asp
A properly executed Health Care Power of Attorney will prevent the need for a costly court appointed Guardian. Visit this website for more details about a Guardian.

www.irs.gov/individuals/article/0,,id=96596,00.html
Expecting a tax refund? This link allows you to track your refund through their secure website.

www.alta.org
Interested in learning more about title insurance? Check out this website for more detailed information.

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