

# MCA NEWS

Spring 2005

Volume 8 Issue 10



**EQNL SGD OQDRHCDMS**

## TOOLS FOR A CHANGING WORK ENVIRONMENT

By Sean Sullivan, Stirrett-Johnsen

*Remember the days when contracts were a handshake and a relationship? When takeoffs were done by hand, and we didn't have cell phones to connect with our offices on bid days? Change is no stranger to our industry; whether slow and subtle, fast and furious, temporary or permanent, some change is inevitable. It is reassuring to have an association like MCAWW that consistently offers the tools and support to help compensate for these changing times.*

There is no doubt that the way we are doing business is changing. Some of the reasons for this are clear: for example, as David Allen noted at the recent MCA luncheon, the aging baby boom generation is changing the types of projects seen by our industry. Some changes are subtle enough that we don't feel an immediate impact; others drive us to re-examine our business models. Regardless, this is a time to examine and address the future impact of some present day issues, and to appeal to the strength of our association and the tools it offers.

I often hear comments about the unique nature of MCA. Few associations have members like ours who support their association and participate in its success to the extent that our members do. It's not unusual to see people from rival members compete ferociously over projects, then enjoy association social gatherings and participate on committees and boards together. Member firms also take interest in and support the legislative activities offered by MCA, recognizing that they benefit our businesses, our employees and our taxpayers. At the same time, MCA members recognize that their as-

sociation is striving to adapt to change and continue to offer the highest quality of services to its members.

### Change Can Bring Challenge

Today, mechanical contractors in our region face increasingly unfavorable contract terms. We are required to carry more risk, for which we are not necessarily compensated in terms of higher fees. We see more and more importance placed on 'green buildings,' without full consideration to the cost of these initiatives. Our current local business environment is becoming less friendly as we see the approval of more and more government regulations and higher business taxes.

Mechanical contractors are also slowly losing parts and pieces of the scope of their work package. We are facing a restructuring of the CSI Specification sections; we are seeing a trend in the pre-purchase of mechanical equipment by our clients, who claim that it makes them more competitive. This problem is two-fold: mechanical contractors lose the opportunity to provide value-added services, and the overall project costs are higher to the owner.

### Tools for Dealing With Change

So how do we protect ourselves from the impacts of these and other changes? Apart from tweaking our individual strategies, we can take advantage of the tools already available to us, such as the MCA member hotline as well as the educational programs, safety, and strong legislative support that our association offers.



MCA provides a united front against challenges by representing our members in governmental, legislative and construction consortiums. Safety services are provided so that our members can identify and react to changes in the regulatory environment. MCA monitors, protects, changes, and participates in legislative processes that provide our members with a business-friendly environment.

MCA offers carefully developed educational programs that allow us to be on the leading edge of competitive services. MCA's new educational series, which includes an HVAC Engineering program and a future plumbing technical program, fills a tremendous void, since this type of training targeted specifically toward mechanical project managers is not readily available elsewhere. MCA's Project Manager programs allow project managers to be more efficient and more capable by better managing scheduling, productivity, etc. They provide contracts education to allow members to identify risk and protect their margins. In taking advantage of these programs, our members are able to strive to provide top-level services to construction industry clients.

As the economy improves and we all get busier, I urge you to keep focus on changing trends and how they will affect your business. I encourage you to use the valuable tools offered by MCA and to voice your legislative, safety and educational needs—MCA is listening. Together, we will lessen the impacts of change.

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# EXECUTIVE BRIEFING

## BITS & PIECES.....

By Brian Garvey, Executive Vice President

Many of you have probably already received information directly from the Trustees of the United Association National Pension Plan regarding their less than desirable financial condition and the effect on the plan's future service credit benefits. While this is an obvious concern for the U.A. rank-and-file who are still accruing their yearly pension credits, a more subtle yet equally serious impact the reduction of plan assets poses is an "Employer Withdrawal Liability" on signatory contractors. Any employer that ceases to make National Pension contributions on plumber and pipefitters performing bargaining unit work within the same union jurisdiction for up to 5 years after a period of an unfunded liability will be responsible for their pro-rata share of the asset shortfall. Much needed benefit reductions and a more productive return on plan assets will remedy this situation over time.

### **MCA is the Public Works Bidding Police!**

Several years ago when we discovered a major public agency blatantly ignoring the public bidding laws, their in house attorney sarcastically queried "Who are you guys, the public bidding police?" The answer was, and still is, **YES WE ARE!** (By the way that little transgression resulted in a \$50,000 donation to the Boys & Girls Clubs of King County by the public owner.) To enhance our assistance in this arena, we have established a "hotline" for MCA contractors to report perceived unlawful public project bidding procedures. Please see Ed Kommers' article on page 4 for a summary of projects that MCA and sometimes our attorneys have intervened. It is always better to have the resources of your Association provide the impetus to review the actions of a public agency, as opposed to an individual subcontractor. Please notify Ed of any irregularities that you experience.

Legal council Arne Hedeon has written a concise and cogent article on the pitfalls found in some subcontract documents. You will profit immeasurably if you take the time to consider his suggestions. His very practical advice could save you some major heartache down the line.


The Democrat's control on the State House, Senate and governors office continues to pro-

vide many challenges to the business community. A major piece of legislation that will affect members that was pushed by labor is the mandatory utilization of State Apprentice Council registered apprentices on all public contracts over a million dollars in value. The legislation already signed into law by the Governor (and over our strong objection) will be effective in July and require at least 15% of the total manhours to be performed by apprentices. A problem that has already evidenced itself on the PLA projects that contain this provision is the over-utilization of apprentices by contractors and resulting in a stiff financial penalty. Call your local JATC Training Coordinator to make sure that you will not be in violation of SAC standards for having too many apprentices on a project.

On Monday, April 4<sup>th</sup>, Local 26/MCA Apprenticeship Trustees took action to begin development of a new \$3.5 million training center in Burlington to satisfy the future plumber, fitter, welder apprenticeships and journeyman training requirements for the northern jurisdiction of Local 26. Completion date is scheduled for December of 2005. Call Dennis Kloida, Local 26 Apprenticeship Administrator, at (360) 486-9400 for further details.

Contract negotiations with Local 32 will commence in mid-April for a successor agreement to our current contract that expires May 31<sup>st</sup>. Please call or e-mail me if you have any suggestions for your negotiating committee.

Lastly, to those contractors out there (and you know who you are) that don't participate, I strongly urge you to start taking advantage of the educational opportunities provided by MCA. Everyone needs to stop working once in a while and take time to "sharpen their axe." Working with a sharpened edge is a lot more efficient than swinging an old, dull blade! The quality of our locally offered Project Manager and Technical programs are unsurpassed and the cost is remarkably low. You really should attempt to take advantage of these programs.

See you at the meeting, Brian. 



# Legal Line



By Arne Hedeem, Hedeem & Caditz

**LOOK BEFORE YOU LEAP**

I have had occasion recently to review several “state of the art” subcontract agreements proffered by large Northwest and regional prime contractors for recently bid municipal projects. Public works contract documents have evolved to the next generation. It is more important than ever that subcontractors implement a systematic approach to subcontract review and look very carefully before they leap. A 10,000-foot view follows:

## The Process Starts with Your Bid Proposal

Subcontract review, and your ability to negotiate acceptable subcontract terms, starts at bid time. While recommendations for specific language are beyond the scope of this article, suffice it to say, **your bid proposal should be conditioned on negotiation of mutually acceptable terms and conditions and your scope and price based on specific conditions and exclusions.** Like scope and price, conditions and exclusions are the very basis for your proposal. Your proposal letter is not a static document. Conditions and exclusions should be periodically reviewed and updated for experience and market conditions. Scope disputes arise on jobs because conditions and exclusions either were not incorporated into the executed agreement, because something came up during performance you did not think of when the contract was executed, or because the conditions and exclusions language you chose was not clear. Don't make the same mistake twice:

- If an issue comes up on a project that you believe could have been addressed by clear conditions or exclusions, revise your proposal letter.
- Obtain your competitors' bid proposals and learn from those documents.
- Revise your conditions and exclusions to address the latest generation of subcontract risk shifting provisions.

## Invest in Your Employees

**Train one or more persons to review and analyze contracts.** These employees learn from experience.

- Evaluate your employees' knowledge and performance from time to time.
- Make continuing education part of their job description.
- Provide appropriate resources such as seminars and access to legal counsel for larger subcontracts.

## Get the Entire Contract

Before review begins in earnest, **subcontractors must assemble all documents incorporated by reference into the proposed subcontract.** Most of my clients have received my cranky voice mail message “I received your subcontract on the XYZ project; where the bleep is the Prime Contract?” Unfortunately, many prime contractors make you ask for their contract with the owner and some even refuse to make a copy and require you to go to their place of business to get it. All subcontracts contain provisions incorporating the prime contract and other documents. As a result, the boilerplate in the subcontract is just a starting place for subcontract review. The trail leads wherever the documents that are incorporated by reference take you. That includes the prime contract and its General Conditions and Special Conditions and all other documents referred to in the subcontract including attachments that you might not expect to include terms and conditions.

## Review the Entire Contract

**Examine all of the attachments to the subcontract carefully for risk shifting provisions.** You will find terms and conditions in places you do not expect them. I recently reviewed a national general contractor's subcontract and found important risk shifting provisions in the attachments to the agreement. These included an “Attachment ‘X’ Scope of Work” which included a lot more than scope. For example, there were many paragraphs dealing with Scheduling obligations which gave the prime the right to make schedule changes and waived the subcontractor's right to additional compensation regardless of cause. There were “Coordination” paragraphs that were intended to preclude the subcontractor from making claims for increased cost or non-productive labor based on the general contractor's inability to coordinate trades and re-sequencing of the work. Other provisions were apparently intended to place the burden to coordinate other trades' work on the subcontractor.

## Get Your Estimator's Input

The “contracts manager” behind the desk needs input from the people who estimated and bid the job. Make sure the personnel that estimated the job have a role in a subcontract review. An employee with knowledge of your bid scope and plan for the work should perform a “scope to scope” review. If assumptions were made by the estimators, make sure they are included in the subcontract.

“Conditions and exclusions should be periodically reviewed and updated for experience and market conditions.”

“All subcontracts contain provisions incorporating the prime contract and other documents.”

“You will find terms and conditions in places you do not expect them.”

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# Member Hotline for Public Works and Contracts Yields Results

**MCAWW Member Hotline:  
(206) 442-9029**

By Ed Kommers, MCAWW Government Affairs Director

Our member hotline has received more than thirty calls since its inception last fall. Many calls were handled on the spot by providing some information or direction for the member caller. A few of the more interesting matters are detailed below:

- The Port of Seattle allowed an \$8 million piping job on Harbor Island to be awarded through a tenant to a non-union contractor without a public bid process, even though the Port was paying for the work. We continue to work on this matter with Labor, and will convince the Port to put similar projects out to public bid.

- Evergreen Hospital was going to directly purchase HVAC and electrical equipment for its new \$70 million expansion. MCAWW was able to convince the hospital to keep the equipment procurement in the contractor supply chain.

- Did you know that the State can refuse a subcontractor, as allowed in their stan-

dard conditions? We are helping one of our members appeal a decision by the State to not let them on the job, even though they were listed and they meet the responsibility criteria. Call MCAWW if you see a misuse of bid listing or responsibility criteria.

- King County was bidding against our members with their own forces as part of the Small Works contracting process. MCAWW worked with King County to revise their procurement process to be in line with the terms of the Small Works statute.

- We are assisting a member whose bid was illegally substituted after being listed. The matter is still open.

- MCAWW was able to discourage the State from awarding a GCCM mechanical trade subcontract on the basis of an unfair points system.

- Many local architectural and con-

sulting firms are using bid forms that do not comply with current law. We helped one such firm revise their bid listing requirements to reflect the current statute. We need your help to find these outdated forms that do not provide our members the protection to which you are entitled.

- Other calls were about bonding around retainage, bid protests, claim management, and insurance requirements. Call us to help preserve your bidding rights or help you understand complex procurement requirements.

This hotline is a valuable resource for our members, but **it only works if you use it!** Call us if you have questions. We can help direct you to the appropriate resource and on occasion can take the lead in an effort to protect your anonymity. The data from our hotline is helping establish a database of problems that we use in our legislative efforts.

## Alternative Public Works Contracting (Also known as GC/CM)

Many of our members are not convinced that the GC/CM process is good for them or for taxpayers. We are working on a logical outline of GC/CM issues supported by facts and case studies. We will use this information to provide suggestions for legislation to improve the GC/CM process.

**MCAWW's outline focuses on three categories:**

- Eligibility Process
- RFP, Bid Form, Scope Packages and Terms/Conditions
- Construction Management

**Our action plan has several steps, which are currently in progress:**

- Meet with GC/CM to review our problem areas
- Meet with public owners
- Meet with legislators
- Encourage participation by other related industry groups (SMACNA, NECA, WICA, etc.)
- Participate in industry groups (JLARC, AGCSFC, Oversight Committee, etc.)
- Introduce legislation to effect changes
- Prepare an organized approach to the renewal of GC/CM in the 2007 legislative session

**We need your input and participation!** Call Ed Kommers or Mark Gauger at MCAWW, (206) 442-9029, with questions, problems or recommendations.





# UNITED SUBCONTRACTORS ASSOCIATION

## LHC, SDQL KDFHRK@SHUD QDONQS

By Larry Stevens, MCAWW Lobbyist

Wednesday March 16<sup>th</sup>, marked the crucial House of Origin cut-off, the “halfway” point of the session. Of approximately 2,300 individual bills introduced by the one hundred forty-seven legislators, three quarters of them did not survive that cut-off.

As we work through the last weeks of the session, the majority party has enough bad legislation alive to keep business lobbyists hustling. Unlike the last few years where a lot of “really bad” legislation died because we had a political split - the House in Democrat hands and the Senate in Republican hands - this year the Democrats run the whole show, including - for a while yet - the Governor’s office.

So here’s where we are today:

1. The first order of business for the Majority Party was to pass the union inspired “**apprentice utilization**” bill, SB 5097. This codifies a Gov. Locke Executive Order that requires 15% apprentice labor on public works jobs.
2. Legislation correcting the bad result of the “**Mike M. Johnson**” Supreme Court decision died, but there is an outside chance for resuscitation. Business lobbyists are scrambling to find a vehicle onto which an MMJ “fix” can be attached.
3. Also in limbo is a Democrat desire to amend the “**unemployment insurance**” law. Two years ago, a major bi-partisan change was enacted by a Democrat House and a Republican Senate, and signed by Democrat Governor Locke. All of the changes have not even come into play yet, but Democrats - on behalf of the Labor Council - are trying to take back what they gave in the 2003 negotiation process. Their stated purpose is to: 1) return to “liberally construing” the statute; 2) eliminate “four quarter averaging;” and 3) achieve both with “revenue neutrality.” They have not come up with the alchemy to reach this result, so they passed a “title” only bill in the House (HB 2255) to use as a vehicle when they find their proposed solution!
4. Changes to the workers’ comp “**retro-**

**spective rating**” program is a moving target, but is, nonetheless, a BIG target of the majority Democrats. Though they bristle at the charge, and have tried to stifle witnesses who identify what is going on, there is no question the Democrats want to slam-dunk a specific opposition group in the construction industry. Their original, somewhat transparent bills have fallen under a barrage of opposition, some even from editorial writers who lambasted the Democrat attack on the construction association. The retro bills have died, but this issue may not have a stake through the heart yet!

5. Another major policy issue that can negatively impact all employers is adding “**sexual orientation**” to the laws against discrimination. This bill, HB 1515, will allow employers to be dragged before the State Human Rights Commission to defend themselves against charges by disgruntled employees based on the employees’ self assumed “sexual identity.” HB 1515 has passed the House, and may soon be debated by the Senate.

6. A “**Family Leave Insurance**” bill has passed the Senate (SB 5069) and been heard by a House Committee. If passed, it would create a new bureaucracy funded by a \$0.02 per hour tax that would pay employees \$250 a week while they took leave to care for a sick “family member” or a healthy newborn/adoptee.

7. The House has passed a bill (HB 1557) over to the Senate that adds an outside lineman to the **Electrical Board**. Smaller contractor groups are promoting an amendment in the Senate that would add - in addition to the “lineman” - a new employer member who is a specialty electrical contractor (e.g. HVAC, appliance repair, etc.).

8. The House passed a bill (HB 1719) that would increase “**school district bid limits**.” The existing limit on work done “in-house” is \$15,000 for multi-trade jobs, and \$10,000 for single trade jobs, like a plumbing job or electrical job. The proposal would take the limit up to \$75,000, eliminate the single trade differential, and insert an “escalator” to automatically increase the limit every two years. NECA and MCA have taken a hard

position against any increase. However, other contractor groups, including general contractors, utility contractors, and bonding companies have agreed to an increase to \$40,000 (~62% increase, about twice the inflation since the last increase!), as well as deletion of the single trade differential, but no “escalator.”

9. Our proposal to “**prohibit rejection of all bids without good cause**” died, but has been replaced by language (HB 1830) that would create a new version of the alternate public works methods oversight committee that was repealed a few years ago. The new committee would likely reside in the Office of Financial Management, be staffed by a salaried employee, and have volunteers from various interest groups as well as four non-voting legislators. It would be directed to gather data on the effectiveness of D-B and GC/CM, while providing a forum for discussion of construction issues arising from actual construction projects. Some construction employer groups are trying to kill the bill, but it does have the support of committee chairmen in both the House and Senate.

10. House Bill 1384 is now in the Senate. It would allow a “joint operating agency” to purchase material and order construction done utilizing “**competitive negotiation**” rather than traditional sealed bid procedures, or existing “alternate public works methods.” The only existing JOA is “Energy Northwest,” the operator of our only functioning nuclear power plant. While purporting to be done in public, the “negotiating” appears to be done behind closed doors and only revealed after award of the contract. The construction industry opposes.

11. A very complex bill (SB 5773) has passed the Senate, which attempts to **protect homeowners from liens** by contractors and material suppliers. This bill places personal liability on prime contractors and subcontractors, as well as on company owners and the top three persons receiving compensation, no matter what form the compensation takes. It passed the Senate and is seriously opposed by the construction industry, unless its scope can be severely restricted.

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# 49 APPRENTICES

FQ@CT@SD @S RD@SSKD I@SB



By Ed Holmes, Local 32 JATC Coordinator

Last October, the Seattle Area Plumbing and Pipefitting Trust proudly honored its 2004 graduating class, which consisted of 16 plumbers, 10 steamfitters, 16 refrigeration mechanics, and 7 housing plumbers. The program continues to grow, with a current enrollment of 285 men and women in the program. Since December of 2004, we have started 13 plumbers, 14 housing plumbers, 11 steamfitters and 1 refrigeration apprentice. As of this date, all apprentices are working, and we continue to receive calls for more. Our residential program is growing at the fastest rate, with 43 housing apprentices in the program.



**BNLLDQBH@K OKTLADQR**



**QDRHCDMSH@K OKTLADQR**

Brian Easton has joined us as a full-time (day-time) plumbing instructor. Brian brings twenty-six years of experience to the program, and has already made a very positive impact with the apprentices. The future outlook for daytime training is bright, and the training staff is working very hard to maintain high standards and quality training. Our goal is to ensure that we provide skilled future journeymen to our contractors, as well as continuous training for our journeymen in order to maintain our leadership in the industry.

CEU training is in full swing. As of July 1, 2005, State law requires eight hours for a plumbing license renewal. As of July 1, 2006, the requirement for a renewal will increase to sixteen hours. Needless to say, the training center is a very busy place.



**RSD@LEHSSDQR**



**QDEHFDQ@SHNM**



## PLUMBERS

- Chris Carpenter  
(Achievement Award)
- Florin Corbean
- Suzanne Craven
- Noah Embree
- Ryan Fleming
- Chad Franklin
- Jason Froula
- Jose Fuentes
- Jordan Gurthrie
- (Achievement Award)
- Chris McCurry
- Brenden McElroy
- Sarah Rollins
- Steve Simpson
- Greg Smalling
- Doug Wright

## STEAMFITTERS

- Duane Allen
- Josh Arnold
- Dale Fatland
- Lou Gitchell
- James Jackson
- Travis Macy
- Bryon McDaniel
- Matt Moore
- Kevin Scott
- Casey Storey

## HOUSING PLUMBERS

- Steve Harris
- Chris Hendry  
(Achievement Award)
- Richard Jung
- Travis Justice
- Michael Kelley
- Jeff Kortekass
- Jeremy McCory

## REFRIGERATION

- Ralph Baker
- Brian Hanson
- Roberto Hernandez
- Jerod Howard
- Leo Karyavvy
- Christian Keays
- Nels Keith
- (Apprentice of the year)
- Jon Paul Marquiss
- Troy Miller
- Bryan Myers
- Chad Reid
- Todd Roberts
- Dean Snyder
- Elliot Traweck
- John Valliant



## Kudos To MCA Members

The Association of Washington Business (AWB) presented **University Mechanical Contractors, Inc.** with the 2004 Better Workplace Award for Job Training & Advancement, in recognition of UMC's comprehensive training program.

**Plumbing Today, Inc.** was recently featured in the 'UW Minority Business Awards' section of the *Puget Sound Business Journal*, (November 19-25 issue, page 10A), in recognition of their UW 2004 Emerging Business Award. Plumbing Today, a woman/minority-owned company, was established in 1980 under the leadership of **Barbara**

## Northwest Construction Best of 2004 Awards

The following member firms were recognized in the 'Best of 2004 Awards' section of the December 2004 issue of *Northwest Construction Magazine*:

Best Mechanical Project - Sea-Tac Airport Concourse A: **University Mechanical Contractors**

Best Public Project - Seattle Central Library: **McKinstry, W.A. Botting**

Best Public Project - Honorable Mention - Sea-Tac Airport Concourse A:

**University Mechanical Contractors**

Best Electrical Project - Seattle Biomedical Research Institute: **McKinstry**

Best Public/Private Project - Northwest Detention Center: **Auburn Mechanical, MacDonald-Miller Facility Solutions**

Best Private Project - Honorable Mention - MultiCare Medical Center Addition, Tacoma:

**Hermanson Corporation, Stirrett Johnsen**

Best Renovation Project - King County Courthouse: **Hermanson Corporation**

**Rendon-Tomingas** and her husband, **Mark Tomingas**. The Mount Vernon-based firm performs both public and private commercial work. The firm employs 20-35 people and has a consistent annual volume of approximately \$10 million.

**Pete Botting of W.A. Botting Company** and his wife, **Maureen**, have created two scholarships that will provide tuition aid to students at Western Washington University. Pete established the *Peter A. Botting Scholar-*

*ship in Music* for a Sultan High School graduate attending Western Washington University. Maureen created the *Maureen Botting Women's Golf Scholarship*, which provides an annual scholarship of \$1,500 to a student on the women's golf team.

*"Around The Sound" highlights industry news of all kinds. If you have information, such as new projects, awards, staff hires and promotions, or relocations, that can be included in future issues, please send it to Robin Cowper, MCA NEWS editor.*

## Safety First



## Members Recognized

By **Mark Gauger**  
MCAWW Director of Safety

MCA of America announced that two of our Western Washington Chapter members have won safety awards for 2004: **J.H. Kelly LLC**, Vancouver WA, won 1<sup>st</sup> place in its size category for "Over 1 Million Work Hours," while **Shinn Mechanical**, Bellevue WA, achieved 3<sup>rd</sup> place in its size category for "100,000 Work Hours or Fewer."

The National Safety Council (NSC) recently announced that **J.H. Kelly LLC** and **W.A. Botting Company**, Woodinville, have been honored with 2004 Industry Leadership Awards for achieving the best safety performance in their respective categories. The awards are a component of the NSC's member-exclusive Occupational Award Program, created to recognize outstanding safety achievements among its members. The categories are based on the Standard Industrial Classification (SIC). J.H. Kelly LLC and W.A. Botting Company are two of 92 companies honored with the 2004 Industry Leader Awards.

The National Safety Council also selected

**Pete Botting**, as one of seven CEO's across the United States to be featured in their article *CEO's Who 'Get It'* for the February 2005 issue of their *Safety & Health* magazine. Of the seven CEO's featured, W.A. Botting was the smallest company, as well as the only construction company chosen.

At the recent Oregon Governor's Occupational Safety & Health Conference **W.A. Botting Company's** Oregon office was recognized with an "Employer Award." This award is given to an employer with up to 30 employees that has made an outstanding contribution to occupational safety and health. **Nicole Robinson** of J.H. Kelly LLC won the "Industrial Hygienist Award," which recognizes an industrial hygienist's outstanding contribution to occupational safety and health. Nicole manages J.H. Kelly's Industrial Hygiene Program for more than 1,000 regular employees and has a Master's Degree in Environmental and Occupational Science. With her help, J.H. Kelly has reached five million man-hours without a lost-time injury. ☹

## Hauling Compressed Gases



Recently, a mechanical contractor's truck driver was cited for not carrying shipping papers while hauling bottles of compressed gas. The following is a brief review of the most basic rules on hauling compressed gases and the requirement for shipping papers:

### No Shipping Papers Are Needed:

Anything under 240 lbs. total weight (when you are hauling for yourself under the "Materials of Trade")

### Shipping Papers Required:

Anything 241 lbs. total weight or greater

### Hazardous Placards Required:

Anything 1,001 lbs. total weight or greater

### Remember:

- Any violation of these standards will be cited to the driver
- Citations are a criminal offense
- Large compressed bottles weigh 130-140 lbs. each (when hauling them empty, you must consider their weight as full)

For questions or more information about transporting compressed gases or other materials, please contact Mark Gauger at MCAWW.

# MCA of Western Washington

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### **Control Contractors**

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### **Enviromech**

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Pher Holmberg, President

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Continued on next page

# Membership Roster

Continued from previous page

## Contractor Members

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**Lent Mechanical, LLC** **NEW MEMBER**  
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## Associate Members

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Rick Root, Sales

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# Membership Roster

Continued from page 9

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Donald Duehn, President

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Steve Baughn, Line Sales

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## OLYMPIA FILE

12. HB 1625, called the **employer reference bill**, provides immunity from suit for an employer who gives an honest employer reference for a former employee. Passed the House.
13. SB 5348 allows the Clark County PUD to continue to offer **electric appliance repair** in competition with the private sector. Passed the Senate.
14. SB 5160 would **prohibit cellular phone use in automobiles** unless using a hands-free device. Passed the Senate.
15. HB 2055 would **require workers' comp coverage for a construction company owner** who actually does work on a construction project but has not elected workers' comp coverage. Died!

You are encouraged to call your legislator on any and all proposals they are considering and voice your opinion. The more they hear from us, the more likely they are to vote correctly. You can reach the Legislative Hotline at (800) 562-6000. ☒

Larry Stevens can be reached at:  
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## LEGAL LINE

### Prepare for Negotiations

Spend some energy preparing for negotiations with the prime contractor. **Draft a "Rider" or red line with your requested changes in a form that is easy to understand and get it to the general contractor before the negotiation meeting.** While general contractor offered agreements contain very one-sided provisions, your requested changes should be reasonable, in accordance with your bid conditions and exclusions, and consistent with industry practice. For example, suggest language for MEP Coordination meeting obligations that further the project goals. When sitting face to face with the contractor, it is much easier to argue for inclusion of subcontract language that is in accordance with industry practice and that works for both parties than one-sided and unfair language. That puts you at an advantage. Think up examples before negotiations why the language in the proposed subcontract is unfair and not workable and bring them up when you discuss the contract. Send experienced and qualified people to the meeting.

### Keep Score

**Keep notes at the meeting including who you met with, the date of the meeting, and what their position was, the arguments they advanced and the results of the discussions.** You may have subcontract negotiations with that contractor concerning other projects in the future. After the negotiations and after a subcontract agreement is executed, your notes and the subcontract should be filed in at least two places. File one like you ordinarily would for the project at issue. Put another copy in a file under the contractor's name. Use that file the next time you are low bidder to that contractor. Use your successes on this job to negotiate changes on the next job. If you have several subcontracts with a single general contractor, consider negotiating a Master Subcontract Agreement with that contractor.

*Construction contract documents are tougher than ever with risk shifting provisions in places you would least expect them. The list above is intended to help you do some thinking about whether you are taking a good look before you leap and doing all you can to have successful negotiations. MCA of Western Washington will be offering subcontract review programming again this year. I invite you to attend. ☒*

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# MCAWW EDUCATIONAL PROGRAM UPDATE

During the most recent session on Labor Relations, students from the senior level MCAWW Project Manager Certification Program had the privilege of receiving valuable insight from **Phil Wells**, Business Manager for UA Local 26 and **Dennis Kloida**, Training Coordinator for UA Local 26 JATC. Phil and Dennis, together with **Brian Garvey** and **Ed Kommers** of MCAWW, formed a panel for mock labor negotiations.

## Coming Soon:

**MCAWW Project Manager Certification Program:** watch for either an entry-level "Fundamentals of Project Management" or a career-level "Enhanced Skills for Experienced Project Managers" in September 2005

**Technical Series:** HVAC Engineering for Non-Engineer Project Managers, the first of a new Technical Series sponsored by MCAWW, will kick off on April 14, 2005. The Technical Series will continue in the Fall or Winter with a Plumbing Technical Program, which will provide a comprehensive review of the 2003 Uniform Plumbing Code and basic plumbing systems.

**Seminars:** The MCAWW Board of Education plans to offer several seminars throughout the year on topics that are of special interest to our members. Please provide your feedback; topics currently under consideration include:

- Public Works bidding
- LEED application in mechanical work
- Killer contract clauses and how to avoid them



Phil Wells and Dennis Kloida of UA Local 26, together with Ed Kommers and Brian Garvey of MCAWW, serve as a panel for an exercise on Labor Negotiations



Students prepare to face the Labor Negotiations panel

## MCAWW Board of Education

Jack Cheetham, MacDonald-Miller (Chair)

Michael Burrus, W.A. Botting

Brian Acton, BMWC Constructors

Jeff White, Holmberg

Stacy Johnson, Auburn Mechanical

Jerry Day, McKinstry

Brad Magruder, Automated BCS

Gary Polain, Ozmosis Leadership (facilitator)

Ed Kommers, Director of Technical Services, MCAWW

## Second Tier Subcontractors Must Provide Preclaim Notice

By Arne Hedeon, Hedeon & Caditz

Last month, the Washington State Supreme Court clarified ambiguity in public works bond and retainage statutes, and held that second tier subcontractors providing both labor and materials on public construction projects are required to provide a preclaim notice in order to maintain a claim against the general contractor's payment bond and against the retained percentage for the materials portions of their claim. The court's ruling requires that **MCA subcontractor members performing work as subcontractors to subcontractors on Washington State public works must file preclaim notices in order to claim against the general contractors bond and retainage.** If the 10 day and 60 day and retainage preclaim notices are not provided, second tier subcontractors may not recover under the bond and retainage statutes for the materials portions of their claim. First tier subcontractors and second tier subcontractors that do not provide materials are not required to provide preclaim notices for the labor component of their claims.

*LRS Electric Controls v. Hamre Construction*, 107 P.3d 721 (Mar 3, 2005) reversed a Court of Appeals' decision which held that second tier subcontractors providing both labor and materials on public projects were not "suppliers," and were therefore exempt from the statute's preclaim notice requirements. RCW 39.08.065 and RCW 60.28.015 require every person, firm or corporation furnishing materials, supplies or provisions/equipment to a subcontractor on a public construction project to provide a preclaim notice to the general contractor in order to file a claim against the general contractor's retainage or payment bond. The *LRS Electric Controls* court's decision extends this requirement to second tier subcontractors for the materials portion of their claim. **As a result, in order to recover against the general contractor's payment bond, a second tier subcontractor must now provide the payment bond preclaim notice no later than 10 days after the first date of delivery of materials and the retainage preclaim notice no later than 60 days after the first delivery of materials.** The two preclaim

notices must be sent to the general contractor.

It is noteworthy that the second tier subcontractor in *LRS Electric Controls* (relying on the so-called payment application rule that permits a creditor to direct payments as it deems fit where a debtor fails to direct how a payment is to be applied) attempts to make a pro-rata allocation of payments it had received from the general contractor to the materials portion of its bond and retainage claim, so that the balance due on the labor portion of its claim and for which no preclaim notice is required was preserved. The court held that because the subcontractor and general contractor had no contractual relationship and because the materials portion of the subcontractor's claim was barred by failure to provide the required preclaim notice, the second tier subcontractor had no contractual or statutory right to apply any portion of the payments received to the materials portion of its claim. *For more information, contact Ed Kommers at the MCA office.*

# 2005 CALENDAR OF EVENTS

**April 29:** **Wine Tasting Event**  
*Location: Talaris*

**May 4:** **Membership Meeting & Luncheon**  
*Location: Rock Salt Steakhouse*  
*Speaker: Mike Parks, Marples Newsletter*  
*Topic: Local Economy*

**June 1:** **Membership Meeting & Luncheon**  
*Location: Rock Salt Steakhouse*  
*Speakers: CWU, UW & WSU faculty;*  
*Dennis Kloida, Local 26 JATC & Dale*  
*Wentworth, Local 32 JATC*  
*Topic: Education; recognition of scholarship*  
*winners & student chapter presidents*

**August 5:** **MCAWW Boat Cruise**  
*Location: Rock Salt Steakhouse*

**August 26:** **MCAWW Golf Tournament**  
*Location: Druids Glen Golf Course*

**September 7:** **Membership Meeting & Luncheon**  
*Location: Rock Salt Steakhouse*  
*Speaker: Jean Wiley, Consultant*  
*Topic: Stress Management*

**October 5:** **Membership Meeting & Luncheon**  
*Location: Rock Salt Steakhouse*  
*Speaker: TBD*  
*Topic: TBD*

**November 2:** **Membership Meeting & Luncheon**  
*Location: Rock Salt Steakhouse*  
*Speaker: Stanley Berger, MCAA President*  
*Topic: Student Jobsite Tours*

**December 2:** **MCAWW Annual Holiday Dinner**  
*Location: W Hotel*

## MCAWW STAFF UPDATES

**Ed Kommers** has joined MCAWW full time as Director of Technical Services and Government Relations. Ed's experience as a mechanical contractor, combined with his knowledge of public works as well as his relationships within the industry, will bring a great deal of expertise to our organization. Ed is highly focused on managing the MCAWW member hotline, and is working hard to assist our members with bid questions and issues. Together with Larry Stevens and Arne Hedeem, Ed will review the effectiveness of GC/CM and other public works construction.

Apart from legislative issues, Ed will take a prominent role in further developing MCAWW educational programs. He has already developed a new technical series, as part of the Board of Education's vision to expand the program's offerings.

**Sally Eck**, Director of Member Services, decided to leave MCAWW at the end of January to pursue other career interests. During her six years with MCAWW, Sally did a remarkable job in helping to develop and implement many important programs. We appreciate Sally's hard work and will miss her.

**Robin Cowper** has replaced Sally Eck as Director of Member Services. Robin has a background in International Business and Marketing, and brings 7 years of experience in the mechanical contracting industry to the position. She looks forward to working closely with the Board of Education, Member Services Committee, Academic Relations Committee, and MCAWW staff, to continue building Sally's legacy as well as to bring many new, important features to our members.

## ACADEMIC RELATIONS

Congratulations to the University of Washington Student Chapter for winning 2<sup>nd</sup> place in the 2005 MCAA Student Chapter Competition in Scottsdale!



*The UW team addresses the interview panel during the 2005 MCAA Student Chapter Competition in Scottsdale.*



*Mike Gossman (left), President of MCAA, and Jack Wilhelmi (right), chairman of the Career Development Committee, present Pat Cabe, UW Student Chapter President with the UW team's prize during the All-Member Awards of Excellence Breakfast during the MCAA Convention in Scottsdale.*