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DATE: August 21, 2019
TO: ALL SHEET METAL CONTRACTORS
FROM: John Quarnstrom and Jim Bigham
RE: **Fabrication Clause in the Metro Area**

The purpose of this letter is to discuss and re-confirm the so-called “Fabrication Clause” that we have in the Metro Area Sheet Metal Agreement and its application to all Metro Area sheet metal contractors. In addition we want to address the “equalization clause” that exists in all SMARCA sheet metal contracts in all 3 states (Minnesota, North Dakota. & South Dakota). Recently, we have seen a significant renewal in questions and issues regarding the “Fabrication Clause” and the “Equalization Clause” both from Contractors and Local 10. The most recent cases involved pre-insulated phenolic duct and snap-lock pipe.

Fabrication Clause

The Metro Labor Agreement clearly states in Article II, Section 1 (the Fabrication Clause) “all work requiring fabrication shall be performed by the employees hereunder...excepting as to items listed in Section 3 of this Article II. Then, in Section 2, it states: “**No Employer shall subcontract any of the work described in Article I, excepting as to the items listed in Section 3 of this Article II. However, any Employer may subcontract any of said work to any other employer signatory to this (The Metro Area Agreement) Collective Bargaining Agreement.**”

Pre-insulated phenolic duct is fabricated by Sheet Metal Connectors and Albers. Therefore, Metro Area sheet metal contractors may only fabricate this themselves, purchase it from another Metro Area contractor who fabricates it, or purchase from a supplier who purchases it from a signatory Metro Area sheet metal contractor who fabricated it. There is another pre-insulated phenolic duct product known as PAL Duct which is fabricated and sold by AQC Industries. AQC Industries is not signatory to the Metro Area Sheet Metal Contract and to our knowledge not signatory to any sheet metal contract with SMART – the International Sheet Metal Workers Union. We are unaware of any contractor signed to the Metro Area Agreement that fabricates PAL Duct.

In the Metro Area, a Metro Area Contractor **cannot** install the PAL/AQC fabricated ductwork and fittings if they are not fabricated in the Metro Area by Local 10 building trades’ sheet metal workers **except** for very limited exceptions. These exceptions are as follows:

- 1) If a product is “flat specified” in your contract and specifications for the job, you can and must install that product regardless of what the Labor Agreement says. This could be specified by the project architect, engineer, owner, CM or General Contractor, but be sure it is “specifically” required and there is no “or equal” exception.
- 2) If the owner, general or a contractor you are a sub-contractor to supplies this product to you, under their portion of the project contract, you can and must install it as required under your portion of the project contract, like when Walmart supplies certain units.

The Metro Sheet Metal Agreement has included these fabrication restrictions for over 30 years and in this case there are at least two Metro Area signatory contractors fabricating a similar ductwork and fitting product. This clause was originally negotiated by the Union to protect the fabrication work that had been and continues to be performed in the Metro Area by Local 10 Metro Area sheet metal workers. Again, to the best of our knowledge, the only Metro Area signatory contractors manufacturing this type of product for sale is Sheet Metal Connectors and Albers. There is also another phenolic ductwork and fitting product made by PAL/AQC that does not meet this requirement.

The Fabrication Clause also applies to snap-lock pipe for commercial installation. Installation of snap-lock pipe that was fabricated by a non-Metro Area contractor has been raised as a recent contract violation. We have at least two signatory contractors fabricating snap-lock pipe for commercial installation. Sheet Metal Connectors and Schadegg Mechanical both fabricate and sell this product. Therefore, the same rules apply to this as to the phenolic duct for the Metro Area sheet metal contractors. They must either make it themselves or buy snap-lock pipe from those two companies or their distributors such as Ace Supply in the case of Shadegg’s product.

Wage Equalization Clause

The “Wage Equalization Clause” is in every sheet metal contract in Minnesota, North Dakota & South Dakota. It applies to snap-lock pipe for commercial installation and other items fabricated outside the Metro Area, but being installed in the Metro Area and in all the other areas as well. For example, if a St. Cloud sheet metal contractor purchased snap-lock pipe with a blue label or no label and then tried to install it in the Metro Area, this would violate the wage equalization clause unless that contractor could prove that the rate paid the sheet metal workers fabricating the pipe was at least what the sheet metal workers receive in the area it is being installed in. By looking at the yellow label on the product, the rate actually paid to the sheet metal workers fabricating it can be confirmed by Local 10.

To meet your labor agreement requirement and protect your company you need to put on your purchase order where this product is going to be installed. Then you have fulfilled your requirements. It is then up to the manufacturer to pay at least the rate where the product is going to be installed or their current rate, whichever is higher. Paying the higher rate is also the rule that governs having and using the yellow labels. Again, be sure to specify this on your purchase order, whether you are ordering direct from the manufacturer or a supply house. If the snap-lock pipe or another sheet metal product has a yellow label on it, this means it was manufactured under a building trades labor agreement, not a production agreement. The blue label indicates it is union made, but at a production wage rate. There is a distinct number on the label that can be traced back to the company making this product and that company must pay the higher of the building trades rate in their sheet metal contract or the rate in the area where the product is being installed.

Apparently, snap-lock pipe is showing up on commercial work in the Metro area and other areas around our three states, with blue labels or no labels at all (and not yellow labels). Either a blue label or no label means it was likely not fabricated at a building trades rate and that it was not wage equalized to the rate where it is being installed. Local 10 has made it clear they will file a grievance if they find non-yellow label product on the job. Both Metro and Non-Metro contractors should not use blue label snap-lock pipe on commercial work. An example of such a blue-label product would be Snappy's pipe.

There is also yellow label snap-lock pipe that is fabricated outside of the Metro Area. For example, Elgen Manufacturing makes this product and distributes it through Capital Hardware Supply. This product is ok to use in the Metro Area by non-metro sheet metal contractors such as a St. Cloud contractor, but not by a Metro contractor. Even though there is a yellow label on it, be sure to specifically state in your purchase order where it will be installed so that the obligation to wage equalize shifts to Capital Hardware Supply in this case. You do not want this responsibility or liability. This same thing is true where, for example, a Rochester Area sheet metal contractor purchases this product to be installed in Rochester, that contractor still needs to be sure that the product they installed was actually manufactured at a rate equal to or greater than the Rochester rate. Be sure to put this as a requirement on your purchase order.

We know that this can be confusing, but you need to be very careful. Call John or Jim if you have any questions or just want to discuss this further.

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