

From: [Bergquist, Rep. Steve](#)
To: [Bruce, Joyce \(ATG\)](#)
Cc: [Pickett, Anthony \(ATG\)](#); [Gaul, Judy L \(ATG\)](#); [Wankowski, Leona](#)
Subject: Fwd: RCW 39.30.060- Seeking Attorney General's Opinion
Date: Wednesday, December 6, 2023 1:37:48 PM
Attachments: [image001.png](#)
[image002.png](#)
[21-049_Pacific Pile Marine_Rejection \(1\).pdf](#)
[21-049_Pacific Pile Marine_Rejection \(1\).pdf](#)
[Protest denial.pdf](#)

From: Bruce, Joyce (ATG)
Sent: Friday, December 8, 2023 2:58 PM
To: Purcell, Noah Guzzo (ATG) <noah.purcell@atg.wa.gov>; Young, Alicia O. (ATG) <alicia.young@atg.wa.gov>; Paradis, Kelly A (ATG) <kelly.paradis@atg.wa.gov>
Cc: Mai, Rosa (ATG) <rosa.mai@atg.wa.gov>; Paine-Donovan, Rory T. (ATG) <rory.paine-donovan@atg.wa.gov>
Subject: FW: RCW 39.30.060- Seeking Attorney General's Opinion

Hello Noah, Alicia, and Kelly,

We received the below informal AGO opinion request from Representative Bergquist requesting an informal AGO opinion. The legal question asked is, "If they are not self-performing the work, are Prime Contractors required to specifically list licensed HVAC, plumbing, and electrical subcontractors on bid forms for public works under RCW 39.30.060?." Thank you in advance for your work on this. As always, I am happy to circle back if you have any question that need clarification or concerns with this request.

Thank you,
Joyce

Joyce Bruce

Legislative Director

Office of Washington State Attorney General Bob Ferguson

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From: Wade Taylor <wadet@pacificpile.com>
Sent: Thursday, December 7, 2023 7:44:24 AM
To: Bergquist, Rep. Steve <Steve.Bergquist@leg.wa.gov>
Cc: Steve Grayson <steveg@pacificpile.com>
Subject: RE: RCW 39.30.060- Seeking Attorney General's Opinion

CAUTION:External email.

Good morning Representative Berquist,

The precise legal question is likely, “If they are not self-performing the work, are Prime Contractors required to specifically list licensed HVAC, plumbing, and electrical subcontractors on bid forms for public works under RCW 39.30.060?”

As you know from my previous email, public agencies have been (in our opinion) been bending this requirement to enable the lowest bidder to win. This occurred with Lynnwood when the low bidder did not list a licensed subcontractor at all (and Lynnwood stated the low bidder could “substitute” someone in). With the Port of Bellingham, the subcontractor listed by the low bidder was not licensed to perform the plumbing work. The Port reasoned there was that the ability to “sub-subcontract” enabled the unlicensed subcontractor to utilize a licensed plumber and that listing anyone at all was sufficient. And, of course, there was the City of Seattle who rejected all bids without a licensed subcontractor listed.

The above question (asked with “licensed” emphasized) would likely lead to an opinion responsive to the root of the inquiry.

Hopefully this is helpful! I would be happy to discuss with you and/or Ms. Bruce if that would assist.

We really appreciate your assistance with this matter and believe it will be helpful for all contractors in Washington!

Regards,

Wade

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From: Wade Taylor <wadet@pacificpile.com>
Sent: Monday, November 20, 2023 1:52:09 PM
To: Bergquist, Rep. Steve <Steve.Bergquist@leg.wa.gov>
Cc: Steve Grayson <steveg@pacificpile.com>; Jim Davidson <jimd@pacificpile.com>
Subject: RCW 39.30.060- Seeking Attorney General's Opinion

CAUTION:External email.

Dear Representative Bergquist,
Steve Grayson provided me with your contact information and mentioned that you may be interested in working with us to obtain an Attorney General’s Opinion on RCW 39.30.060 **Bids on public works—Identification, substitution of subcontractors—Review, report of subcontractor**

listing requirements. This statute requires contractors bidding public works to list subcontractors it intends to use for HVAC, plumbing, and electrical work that is to be performed on a public work.

Pacific Pile & Marine, LP (PPM), a Seattle based heavy civil marine contractor, has recently had two decisions by public agencies related to that statute that were incongruent to one another in the context of bids submitted. We ask for your help to obtain clarity in the interpretation of this statute for all general contractors and public agencies in Washington by obtaining an opinion from the State Attorney General as to the statute's application.

For context, in March of 2022, PPM submitted a bid to the City of Seattle for its Waterfront Seattle Pier 58 Improvements project. PPM listed a firm called "Pinchiff Mechanical LLC" (Pinchiff) as its plumbing subcontractor. Pinchiff is/was a licensed plumber, but an error made by the Washington Department of Labor and Industries made it impossible for Seattle to verify that license. Prior to their discovering the Department's error, Seattle sent PPM the attached letter stating, "The failure to name a plumber as required for PW# 2021-049's Bidder/Subcontractor List renders Pacific Pile and Marine's bid as non-responsive" and rejected PPM's bid for the work for failing to meet the requirements of RCW 39.30.060. However, because Pinchiff was licensed (as later verified by the L&I) Seattle reversed its rejection of PPM's bid and ultimately awarded the project to PPM.

On November 9, 2023, PPM submitted a bid to the Port of Bellingham in response to its solicitation for the Bellingham Shipping Terminal Marine Infrastructure and Dredging project. After bid opening, PPM was the only bidder to have listed a licensed plumber as its plumbing subcontractor (two bidders incorrectly stated there was no plumbing work and the remaining bidder (the apparent low) listed a non-licensed plumbing subcontractor). As a result of our previous rejection from Seattle for the exact reason of bidding non-licensed plumber, PPM protested the bid and requested the Port of Bellingham award PPM the job as the only responsive bidder. The Port, in rejecting PPM's protest, sent the attached letter stating:

Pacific correctly points out that RCW 39.30.060 obligates prime contract bidders to list, among others, the "subcontractor with whom the bidder, if awarded the contract, will subcontract for performance of the work of ... plumbing as described in chapter 18.106 RCW." This statute does not require that the subcontractor listed be directly licensed to perform the plumbing scope of work, just that the bidder must designate a subcontractor responsible for that specific scope of work. As Pacific knows, it is common for there to be many "tiers" of subcontractors on a large project. While American indicated it plans to subcontract the plumbing work, if any, to Hillco, nothing prevents Hillco from subsubcontracting that work to a licensed plumber if a licensed plumber is required.

The Port intends to award this project to the apparent low bidder and overlook the flawed bid.

We discussed this bid and (potential actions we could take) with our outside counsel who stated there is no relevant case law on the statute as it appears that no party has ever litigated the interpretation of this statute (strictly from a business standpoint it is not financially prudent to sue). Our counsel also provided the attached (without names due to client confidentiality) demonstrating that the City of Lynnwood has also interpreted this statute to mean that even not listing a

subcontractor entitles one to “substitute” a licensed subcontractor at a later date. This interpretation also seems to be in error as would “substituting” not require an initial listing?

With the above, the stated intent of the statute is, “[t]his act is intended to discourage bid shopping and bid peddling on Washington state public building and works projects.” The City of Seattle’s interpretation seems to be correct and achieves this goal. However, if the Port of Bellingham and City of Lynnwood are correct, a general contractor bidding work could list any general contractor (or not list one at all) and bid shop HVAC, plumbing and electrical scopes after bid opening. These interpretations seem to be antithetical to the stated purpose of the statute.

As you can see, both contractors and public agencies are at a loss as to the true meaning and application of RCW 39.30.060. While the wording seems clear, the interpretation has led to conflicting results.

Your assistance in making an official request to the Washington State Attorney General to render an official opinion would be greatly appreciated. Please feel free to contact me if you have any questions or need any additional information.

Thank you and regards,

Wade

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