

# Local Government Public Works Contracting Study

## Executive Summary

### Purpose and Scope

To support the legislative directive in ESSB 5418 which passed in 2019, the Capital Projects Advisory Review Board (CPARB) and Department of Enterprise Services (DES) initiated this study to review the public works contracting processes for local governments, including the small works roster and limited public works processes provided in [RCW 39.04.155](#). The scope of the report from the bill reads as follows:

*“... The report must include the following:*

- (a) Identification of the most common contracting procedures used by local governments.*
- (b) Identification of the dollar amounts set for local government public works contracting processes;*
- (c) Analysis of whether the dollar amounts identified in (b) of this subsection comport with estimated project costs within the relevant industries;*
- (d) An analysis of the potential application of an inflation-based increaser, taking regional factors into consideration, to the dollar amounts identified in (b) of this subsection, for example:
  - (i) Applying the implicit price deflator for state and local government purchases of goods and services for the United States as published by the bureau of economic analysis of the federal department of commerce; and*
  - (ii) Adjusting the bid limit dollar thresholds for inflation, on a regional basis, by the building cost index during that time period;**
- (e) Recommendations to increase uniformity and efficiency for local government public works contracting and procurement processes;*
- (f) Rates of participation of all contractor types, including qualified minority and women-owned and controlled businesses, in the small works roster and limited public works contracting processes; and*
- (g) Barriers to improving the participation rate in the small works roster and limited public works contracting processes.”*

DES hired the Municipal Research and Services Center of Washington State (MRSC) to complete the study outlined in ESB5418.

### Methodology and Data Sources

The report includes four major data sources:

- **Literature Review:** MRSC reviewed applicable data and previous studies done in the area of Washington State Public Works Contracting. This process was intended to ensure that the project team is fully aware of the current processes, major studies completed, and interested parties. This review included the recent *Washington State Disparity Study* and the Department of Commerce report, *The Impact of Rural Procurement Study*.
- **Stakeholder Interviews:** MRSC conducted a series of 30 stakeholder phone interviews to discuss the following areas of interest in regards to public works contracting: decision-making in choice of contracting procedures, typical projects for each relevant industry, impacts of a regional bid threshold, specific challenges posed by the contracting processes, factors that drive up costs of projects and steps local government take to ensure competition in the contracting process.
- **State Data Sources:** MRSC identified multiple data sources to find the most comprehensive insight to public works contracting available. The most critical data source came from

Washington State Labor & Industries. MRSC analyzed 184,454 records of public works projects from FY July 2013 – June 2019 and a second data set, as available, from FY July 2019 – June 2020. Other data sources included: The Office of Minority and Women Owned Business Enterprises.

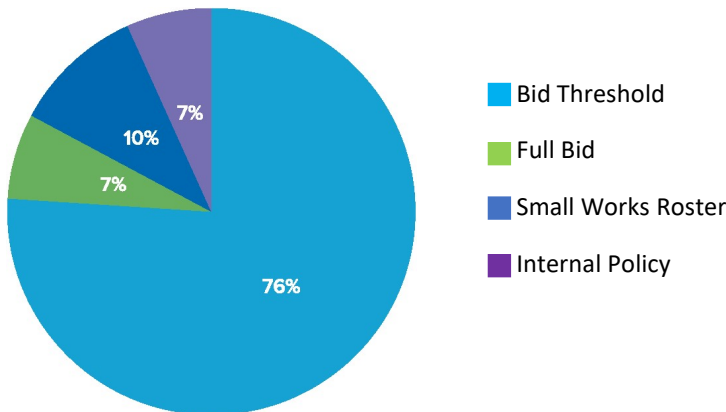
- Local Government and Business Survey:** In order to get additional feedback and data from agencies and businesses, MRSC created a survey to collect information from local government employees and businesses on the barriers they face in public works contracting and perceived improvements to the current process. This information is meant to supplement the more detailed stakeholder interviews and data collection efforts, in order to substantiate our results and fill in any gaps in the project team’s thinking. The survey completed with over 350 local government participants and 95 business participants.

## Study Findings

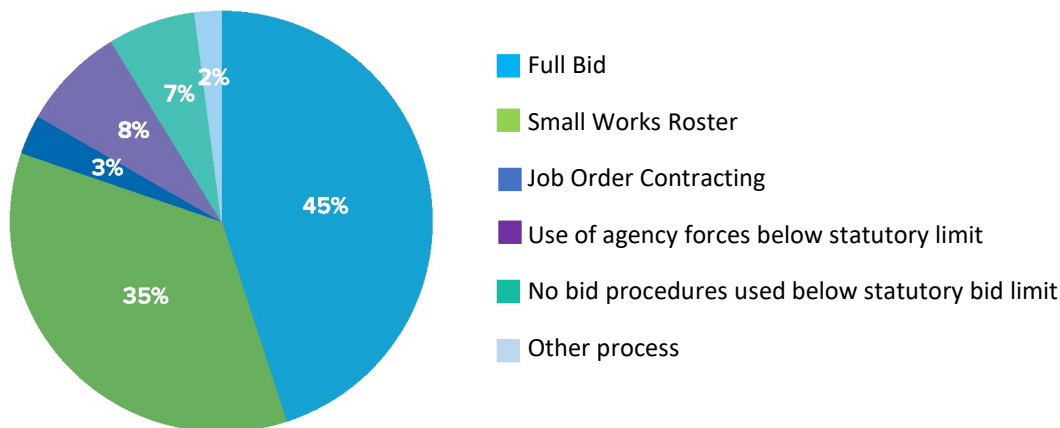
### Most Commonly Used Contract Procedures

To understand the public works landscape, it is critically important to know which of the defined public works contracting procedures are being used most often. Because the current available data that came through the Labor and Industries does not include a field to indicate which contracting procedure was used, the team applied two separate approaches to this question: using dollars as a proxy for contracting procedure, and agency reporting on average use through the survey.

**Figure A.** Count of Public Works Projects by Contracting Procedure, Fiscal Year 2013-2019



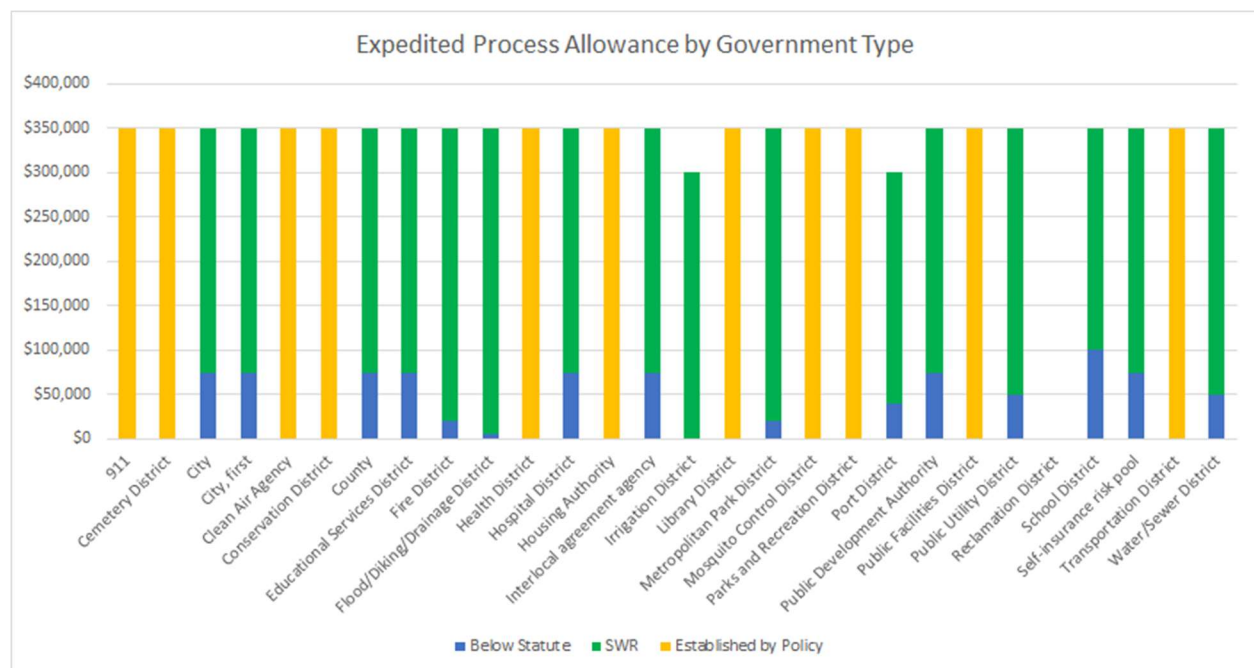
**Figure B.** Survey Results: Approximately what percent of your public works projects are done using the following process?



### Public Works Bid Thresholds

The project team was tasked with indicating whether changing thresholds would be a benefit to all stakeholders and what the best process for changing those thresholds should be. First, there must be a definition of the current threshold landscape. Thresholds for cities, counties and many special purpose district groups are set by the legislature. Included **on page ##** is a bid matrix which displays the current bid thresholds, day labor limits and authority for public works contracting for each agency type. Below is a simplification of this chart, using blue to indicate below statutory requirements threshold, green to indicate the small works roster threshold and yellow to indicate that the process is set by internal policy.

**Figure C.** Contracting Process allowed by Agency Type



### Threshold Changes and Inflation Factor

The majority of local government employees surveyed saw a benefit to raising both the small works roster threshold and the below statutory requirement threshold. Businesses raised some concerns around thresholds, but most concerns were not on what number the threshold was, but the clarity and transparency of the process.

Due to current research limitations and feedback received from local governments across the state, the project team determined that, if an inflation factor were to be implemented, it should be implemented state-wide using the Construction Cost Index (CCI).

**Figure D.** Example of Small Works Thresholds adjusted for Inflation using the CCI 10-year average



### Rates of Participation and Diversity

There is currently no definition of small business in the public works statute (RCW 39.04) Therefore, participation of small businesses in local government public works contracts is not currently measured by any data collection effort. Further, in historical records, there is no data collection effort that displays whether minority and/or women-owned businesses participated in a project as a sub-contractor. At the prime level, minority and/or women-owned businesses participated in 4% of projects, totaling 2% of the dollars spent.

Many barriers were identified for small, minority and/or women-owned businesses, however, none of the identified barriers were specifically tied to thresholds. Identified barriers of participation include:

- Paperwork and requirements are difficult for small and minority and/or women owned businesses to understand and complete
- Lack of availability of minority and/or women-owned businesses in rural areas and the difficulty for firms to know how to find new business
- Lack of understanding of where to look for opportunities or not being contacted for opportunities

### Improving Efficiency

Many improvements to make the public works process more effective were o shared by local government agencies and businesses in interviews and the survey. Ideas for further public contracting efficiencies include:

- Better categorization on the small works roster
- The ability to sort contractors by region/location on the small works roster
- Better outreach/marketing specifically to minority and/or women owned businesses
- Better data transparency to show how bid and who won the project
- Decreasing paperwork associated with the process
- Processing payments faster for small businesses
- Decreasing advertising requirements for public agencies
- Increasing training for public agencies in public works contracting

### Recommendations

Based on the findings in the report and further discussion, the CPARB committee and the project team compiled the following list of actions for submittal to the CPARB Board to consider as legislative recommendations:

- *Adjust Port District and Irrigation District Statutes to refer to RCW 39.04.155*
- *Tie threshold increases to state-wide inflation factor based on CCI*
- *Expand the 'no-bid response' process to all agencies*
- *Give unit price contracting authority to all public agencies*
- *Remove retainage and bond requirements for projects under \$5,000*
- *Create a centralized list of rosters*
- *Create list of certification/registration programs for disadvantaged businesses*
- *Define small business in the public works contracting statute*
- *CPARB update to supplemental bidder responsibility guidelines*
- *Coordinated schedule for significant outreach events between public agencies and other stakeholders*
- *Provide professional assistance to local government for Contracting guidance and Marketing and outreach to contractors*
- *In addition, the CPARB committee submit to the CPARB Board the following suggestions for future studies related to public works contracting: Review threshold limits below the statutory designation*
- *Review how the bidding structure is set for various types of local government*
- *Review the impact of a master governing statute for threshold limits*
- *Review for consolidation of county thresholds*
- *Increase the base SWR threshold amount*
- *Evaluate advertisement requirements for formal competitive bids (i.e. Newspapers vs. other formats)*
- *Review the impact of a centralized state-wide roster*
- *Evaluate the potential program for sub-contractors to express interest in projects*
- *Evaluate possibilities for electronic solicitations for all competitive bidding (currently this appears to only be available in the SWR process)*
- *Expand data collection efforts by L&I (contract types) and OMWBE (participation rates) through a sustained funding model*
- *Identify how State and OMWBE studies relate to local government*