



**STATE OF WASHINGTON
Capital Projects Advisory Review Board**

Local Government Public Works Contracting Study– Update

September 16, 2021

Agenda

30 Minutes

Purpose of Public Works Study

- **5 minutes**

Barriers to participation and next steps

- **5 minutes**

Recommendations – Policy Changes

- **10 minutes**

Recommendations – Maintenance Items

- **10 minutes**

Purpose of Public Works Study

- **Problem statement:** The legislature receives multiple requests each session for adjustments to public works contracting thresholds and processes.
- [SB 5418](#)
- **Purpose:** To review the public works contracting processes for local governments, including the small works roster and limited public works processes, and create recommendations for efficiency to be presented to the CPARB Board.
- This review will include the following:
 - Identification of the most common contracting procedures
 - Identification of current public works contracting thresholds
 - Analysis of applying an inflation-based indicator and other potential threshold adjustments
 - Recommendations to increase uniformity and efficiency for local government public works contracting
 - Rates of participation for small and minority-and-women owned businesses and barriers to improving the participation rate

List of Subcommittee members

- Kristin Hall (PUD)
- Matthew Hepner (CEW)
- Chris Herman (WPPA)
- Keith Michel (General Contractor)
- Karen Mooseker (School Districts)
- Jolene Skinner (L&I)
- Michael Transue (Specialty Contractors)
- Jane Wall (Counties)
- Eliza Young (City of Seattle),
- Garrett Buckingham (Hospital Districts)
- Andrew Thompson (General Contractors)
- Lisa van der Lugt (OMWBE)



Agency Barriers

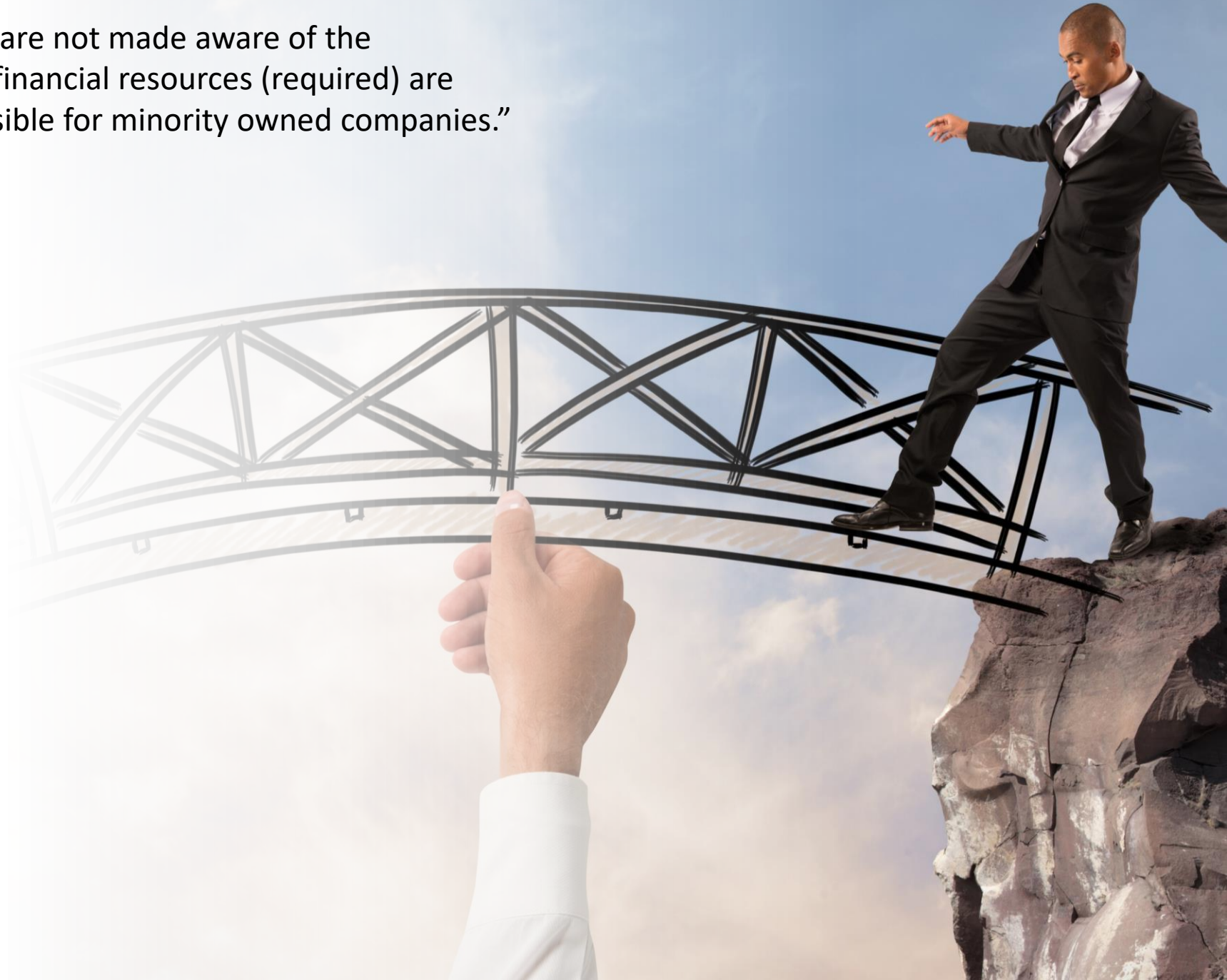
- Perception of no DBE availability
- Challenge with identifying when a firm is a DBE
 - Multiple certification issuers
- Concerns about the cost of Outreach
 - Unclear value proposition
 - Focus on low bid

“There are not many (DBE’s) in our geographic area that are registered which makes it challenging to meet goals or it means that the same companies are being used repeatedly not distributing the work”

“Many minorities like myself are not made aware of the opportunities available. The financial resources (required) are sometimes not readily accessible for minority owned companies.”

Diverse Business Barriers

- Lack of notification of projects
- Unclear return on effort when seeking out Local Government work
- Responding to solicitations can be challenging
- Contracting requirements can be a barrier
 - Insurance, Bonding
- Certification Requirements are perceived as onerous
 - Multiple Certification Issuers
 - Not always an understanding of the value of certification



CPARB Supported
Recommendations
– Policy Changes

- ***Adjust Port District and Irrigation District Small Works Roster Statutes to refer to RCW 39.04.155***
- ***Define small business in public works contracting statute***
- ***Remove retainage and bond requirements for projects under \$5,000***
- ***Tie Small Works Roster threshold increases to state-wide inflation factor based on CCI***

Adjust Port District and Irrigation District Small Works Roster Statutes to refer to RCW 39.04.155

- Port districts and irrigation districts' authorizing statutes refer to dollar values (currently \$300,000) for a small works roster threshold.
- **Recommend revising authorizing statutes RCW 53.08.130(2) (a, b) and RCW 87.03.436 to refer to RCW 39.04.155 and remove any reference to threshold dollar amounts.**
- Doing so would create uniformity in administering the small works roster thresholds and make future increases to the thresholds more efficient.
- This is consistent with other local government agency statutes

Define small business in public works contracting statute

- There is no small business definition in the public works contracting statute for local government.
- Because of this lack of definition, it makes it difficult to track small business participation in local government public works contracts.
- **It is recommended that**
 - 1) A small business definition be inserted into RCW 39.04.010, and**
 - 2) Explicitly refer to the definition found in the state goods and services statute RCW 39.26.010.**
 - (Note: this definition was included and passed in 2021 legislation for the alternative public works statute, RCW 39.10.210, which also references the definition of state statute RCW 39.26.010)

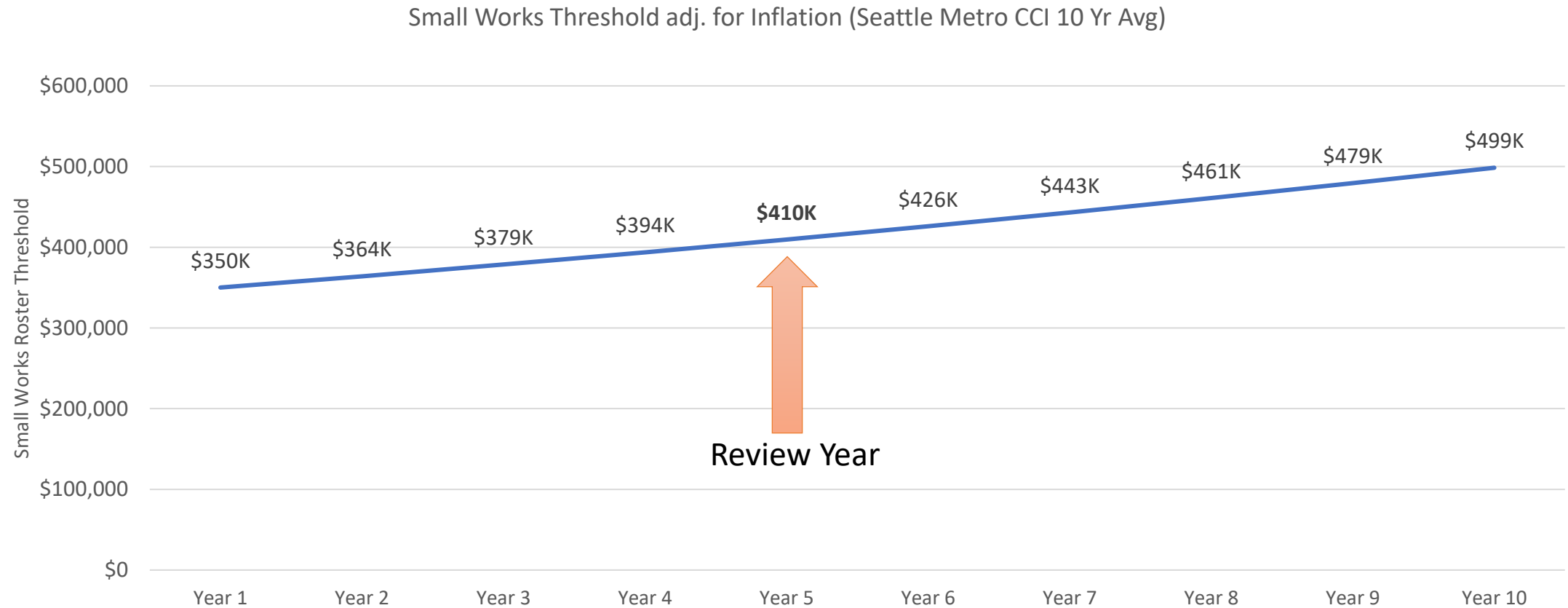
Retainage and Bond requirements

- Paying retainage and performance bonds were identified as a barrier to small and minority-and-women owned businesses as well as causing more paperwork and less efficiency for local government
- Experts at Washington State Labor and Industries and consulted local governments believe waiving these requirements under \$5,000 would alleviate some administrative burden and barriers for small projects, while not significantly increasing risk for local governments.
- **Remove retainage and performance bond requirements for projects under \$5,000**
 - These recommendations would require a review and alteration to RCW 60.28.011 and RCW 39.08.010

Tie Small Works Roster threshold increases to state-wide inflation factor based on CCI (1/2)

- CPARB identified three decision points involved with this action:
 - 1) When/how often would escalations occur
 - 2) How the suggested changes are calculated
 - 3) Who prepares legislative revisions at the designated intervals (i.e. automatic application vs open review process)
- **Two-part recommendation to:**
 - **Implement a review of the small works roster thresholds every five years.**
 - **Implement the use of a statewide inflation factor based on the Construction Cost Index (CCI)**

CCI Inflation Adjustment



Tie Small Works Roster threshold increases to state-wide inflation factor based on CCI (2/2)

- Some businesses (particularly large businesses) were opposed to applying an inflation factor.
- When more projects are under the small works roster threshold, the agency may choose to offer a specific opportunity to only five contractors on their list, as authorized in the statute
- Some businesses would like to restrict that option and require open access for all projects to all listed contractors, especially if the threshold moves above the \$350,000 amount

CPARB Supported
Recommendations
– Maintenance
Items

- **Create a centralized list of Small Works rosters**
- **Create list of certification/registration programs for disadvantaged businesses**
- **Coordinate 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**
- These recommendations require the legislature to identify the appropriate group or state agency to create and maintain this work.
 - Funding will also need to be identified and allocated to achieve this effort

Create a centralized list of Small Works rosters

- Because each public agency is authorized to maintain their own roster, businesses have trouble understanding:
 - How to find which Rosters are available
 - What is required of the contractor in each Roster process
 - The benefit to the business of registering with each Roster
- **This recommendation would require any agency, collection of agencies, or roster service to register in a centralized list**
- A future study concept is to review the impact of centralized statewide roster

Create list of certification/registration programs for disadvantaged businesses

- The Office of Minority and Women Owned Business Enterprises is the only certifying organization in the State of Washington for disadvantaged contractors.
- However, many local governments have their own programs requiring registration for small, minority, women, and veteran owned businesses.
- Some qualifying businesses have difficulty discerning the differences and benefits of certification with the state and registration in other programs
- **This recommendation requires any agency, collection of agencies or service to register in a centralized list of all small business, minority, women, disadvantaged business enterprises, and veteran-owned programs in the state for businesses to understand what resources are available and the benefits conferred by the program.**

Coordinate for outreach events between public agencies and other stakeholders

- Business participants identified that there seems to be a lack of coordination for large conferences, meetings and events for businesses and public agencies to connect.
 - Example: Multiple important events occurring on the same day create difficulty determining which one to attend.
- **This recommendation is to designate to or establish an agency, collection of agencies or service as a resource to create a calendar of major outreach events as a central source for businesses to find outreach information and to ensure similar events do not conflict.**

Provide professional assistance to local government for contracting guidance and marketing and outreach to contractors

- Agencies and businesses suggested that they needed more resources around public contracting.
- Public agencies needed more training on what public contracting processes are available and how to develop them.
 - Examples: Many employees from cities expressed confusion over eligibility to use alternative bidding criteria or unit price contracting
 - It was expressed that they need assistance in writing appropriate scope of work and bid request documents in order to use these processes.
- **This recommendation is to designate or establish an agency, collection of agencies or service as a resource to provide assistance to public agency employees, specifically in the areas of writing scope and bid documents, marketing and outreach.**

Recommendation #11



Public Works Resource Funding



Public Agency Support

- General project guidance
- Supplemental criteria usage
- Scoping documents
- RFP process evaluation



Business Technical Assistance

- Solicitation process guidance
- Requirements consulting
- Outreach events
- Marketing strategy advice



M/WBE Support

- Facilitate M/WBE's/ & Local Gov't connection (mentorship, apprentice)
- Local Gov't Inclusion Plans
- BIPOC/WO community outreach
- Language Access

Ask for funding to support additional FTE for these efforts

*Funding intended to also support other maintenance recommendations

Funding Models - Oregon

- Oregon's PTAC service is known as GCAP: Government Contracting Assistance Program
- Oregon's economic development agency (similar to WA Commerce Department) is called Business Oregon.
- Business Oregon has funded the Oregon PTAC since 1989 and matches their Federal Defense funding.
- Oregon PTAC requests the funding as part of their funding proposal to the governor and it goes through the budget process from there. They receive about \$500k per biennium.

Consideration

Impending Federal Infrastructure bill

- Broadband Access, Digital Equity and Cybersecurity
- Invest in Water and Climate Resilience
- Rebuild of Transportation Connectivity
- Bond Provisions

Questions



Appendix

Future Study Ideas

- **Review for increase the base small works roster threshold amount**
- Review below the statutory threshold limit designations
- 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 county thresholds for consolidation
- Evaluate advertisement requirements for formal competitive bids (i.e. Newspapers vs. other formats)
- Review the impact of a centralized state-wide small works 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 small works roster 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

Defining Thresholds

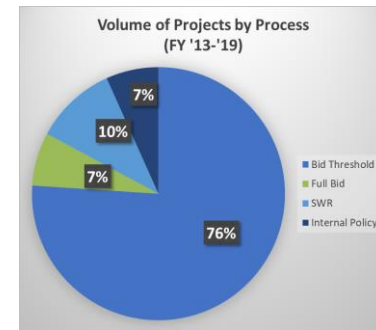
- Two primary public works thresholds
 - Bid Threshold
 - SWR
- Take a variety of forms across agency types

Government Type	Bid Threshold	Small Works Roster Threshold	Applicable RCW	Limits for Work by Agency Employees
Area Agency on Aging	Subject to state bid requirements of RCW 43.19		74.38.050	Follows state requirements of RCW 43.19
City, first class	\$75,500 (1 craft) \$150,000 (>1 craft)	\$350,000	35.22.620	Per project: \$75,500 (1 trade), \$150,000 (>1 trade). NTE 10% of public works budget.
City, second class and towns city code	\$75,500 (1 craft) \$116,155 (>1 craft)	\$350,000	35.23.352 35A.40.210	Per project: \$75,500 (1 trade), \$116,155 (>1 trade). NTE 10% of public works budget.
Conservation district	None; established by policy		89.08	No statutory limits - set by policy
County, population >400k with purchasing department	\$0	\$350,000	36.32.235	Per project: \$45,000 or \$125k for Riverine or stormwater project (1 trade), \$90,000 or \$250k for Riverine or stormwater project (>1 trade). NTE 10% of public works budget.
County, population <400,000 with purchasing department	\$0	\$350,000	36.32.240 36.32.235	Per project: \$45,000 or \$125k for Riverine or stormwater project (1 trade), \$90,000 or \$250k for Riverine or stormwater project (>1 trade). NTE 10% of public works budget.
County without purchasing department	\$40,000	\$350,000	36.32.250	Allowed for non-road projects; road project limits set according to population and motor vehicle fuel tax factor
Educational service district (ESD)	None; established by policy (unless contracting on behalf of a school district, in which case school district bid laws apply)		28A.310	Most restrictive of establishing jurisdiction; if NA then by policy
Fire district	\$20,000	\$350,000	52.14.110	Not authorized
Flood/diking/drainage district	\$5,000	\$350,000	85.38.190	\$5,000
Health district	None; established by policy		70.46	No statutory limits - set by policy
Hospital district	\$75,000	\$350,000	70.44.140	\$75,000
Housing authority	None; established by policy		35.82; AGO 2009 No. 2	No statutory limits - set by policy

Government Type	Bid Threshold	Small Works Roster Threshold	Applicable RCW	Limits for Work by Agency Employees
Interlocal agreement agency	Most restrictive of establishing jurisdiction		39.34	Most restrictive of establishing jurisdiction
Irrigation district	\$0	\$300,000	87.03.435-436	No limit; must bid materials used by employees; must follow public works bid process when materials unless provided by contractor
Library district	None; established by policy		27.12	Most restrictive of establishing jurisdiction; if NA then by policy
Mosquito control district	None; established by policy		17.28	No statutory limits - set by policy
Park and recreation district	None; established by policy		36.69	Most restrictive of establishing jurisdiction; if NA then by policy
Metropolitan parks district	\$20,000	\$350,000	35.61.135	\$20,000
Port district	\$40,000	\$300,000	53.08.120	Allowed for all projects, except when over \$40k, must make a determination whether cost is lower performed by contract
Public development authority (PDA)	Statutes of creating city or county		35.21.730	Statutes of creating city or county
Public facilities district (PFD)	None; established by policy		36.100.030 35.57.020	No statutory limits - set by policy
Public utility district (PUD)	\$50,000	\$350,000	54.04.070	\$300,000
Reclamation district (over 1 million acres)	All public works must be formally bid		89.30.154	Not authorized
Regional support network (RSN)	Statutes of creating county		71.24.300	Statutes of creating county
School district	\$100,000	\$350,000	28A.335.190	\$75,000
Self-insurance risk pool	Most restrictive of establishing jurisdiction		48.62	Most restrictive of establishing jurisdictions
State college or university	\$45,000 (1 craft) \$90,000 (>1 craft)	\$350,000	28B.10.350 28B.50.330	\$45,000 (1 craft) \$90,000 (>1 craft)
Transportation authority (under RCW 36.57 or 36.57A)	None; established by policy		36.57A	No statutory limits - set by policy
Transportation authority (under RCW 35.21.225 or 36.73)	Statutes of creating city or county		35.21.225 36.73	Most restrictive of establishing jurisdictions
Water-sewer district	\$50,000	\$350,000	57.08.050	\$50,000

Note: "Craft" refers to professional trades. The bid threshold is thus based on the number of professional trades required to complete a project.

Current Expedited Process Structure



Expedited Process Allowance by Government Type

