

EO 18-03

STATUS UPDATE

ENTERPRISE PROCUREMENT POLICY
WORKSHOP

May 23, 2019



ENTERPRISE SERVICES – EO 18-03

WEBPAGE

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welcome what we do and provide who we are contact



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Executive Order 18-03 Supporting Workers' Rights to Effectively Address Workplace Violations

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Purchasing
Reciprocal Preference
Reciprocity Map
Sole Source and Emergency Purchase Announcements
WEBS for Government and Non-Profits

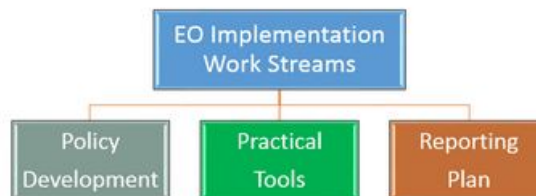
Executive Order [EO 18-03 Workers' Rights](#)

Covered Agencies [Executive Cabinet](#) [Small Agency Cabinet](#)

Resources [Supreme Court Decision \(Epic Systems Corp. v Lewis\)](#) [1991 AGO Opinion No. 21 \(Executive Orders\)](#) [August 2, 2018 Stakeholder Presentation](#)

EO Implementation Work Streams

1. Policy Development
2. Practical Tools
 1. Contractor Certification Template Draft
 2. Training
 3. Communication
3. Reporting Plan



Enterprise Services' Team & Points of Contact

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AGENDA

- EO 18-03 & Enterprise Services
 - Agency Leadership
 - Procurement Procedures
- Collaborative Implementation Roadmap
 - How to Get to Done
 - Practical Tools
 - Reporting Plan
 - Policy Development
 - What Else Have We Learned?
- Next Steps

STATUS UPDATE GOALS

- Understand where we are
- Understand where we're going
- Share the plan to get there
 - Procurement Guidance for implementing EO 18-03
 - Recommended Tools
 - Reporting Solution
 - Training & Communication
- Continuously improve

"People with goals succeed because they know where they are going... It's as simple as that." Earl Nightingale

THANK YOU

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Missy Derickson,
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THANK YOU



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Elena McGrew

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EXECUTIVE ORDER 18-03

Supporting Workers' Rights to Effectively
Address Workplace Violations

JAY INSLEE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 902-4111 • www.governor.wa.gov

EXECUTIVE ORDER 18-03

**SUPPORTING WORKERS' RIGHTS TO
EFFECTIVELY ADDRESS WORKPLACE VIOLATIONS**

WHEREAS, our nation and state have adopted numerous laws that require employers to ensure safe working conditions, fair wages, and adequate breaks, including the federal Fair Labor Standards Act of 1938 (FLSA), the Washington State Minimum Wage Act, and other wage payment and employment standard laws; and

WHEREAS, despite historical efforts to remedy the imbalance of power between employers and employees, such as passage of the National Labor Relations Act, individuals remain limited in their ability to bargain; and

WHEREAS, the United States Supreme Court, in its recent *Epic Systems Corp. v. Lewis*¹ decision, held that if employees sign an arbitration agreement requiring individual arbitration proceedings as a condition of employment, then those agreements preclude employees from pursuing a class or collective action against their employer to resolve disputes; and

WHEREAS, when employers require workers to accept an arbitration clause as a condition of employment they deny workers the opportunity to seek redress for employment grievances through collective or class action in court or in arbitration, and workers are stripped of a powerful tool to level the historical imbalance between employers and employees; and

WHEREAS, the *Epic Systems Corp. v. Lewis* decision will inevitably result in an increased difficulty in holding employers accountable for widespread practices that harm workers; and

WHEREAS, limiting an employee's right to act collectively to address workplace violations and requiring resolution through individual arbitration reduces transparency and diminishes public accountability; and

WHEREAS, collective power is a real force for change, as evidenced by the "Me Too" (#MeToo) movement. When the door to collective action is closed, it limits peoples' power and exacerbates fear of retaliation and of losing one's job; and

WHEREAS, the State has a duty to act as a responsible steward of public dollars. It is also a major employer and plays an influential role in the market place; accordingly, it is incumbent on state agencies to make every effort to encourage and support employers who demonstrate that they value workers' rights to collectively address workplace disputes.

¹ 584 U.S. ___ (2018)

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, by virtue of the power vested in me by the Constitution and statutes of the state of Washington do, effective immediately, hereby order and direct as follows:

1. PROCUREMENT PROCEDURES

To the extent permissible under state and federal law, when making purchasing and other procurement decisions, all state executive and small cabinet agencies shall seek to contract with qualified entities and business owners that can demonstrate or will certify that their employees are not required to sign, as a condition of employment, mandatory individual arbitration clauses and class or collective action waivers.

2. AGENCY LEADERSHIP

To ensure operational success and consistent application of this Order across state agencies, the Department of Enterprise Services (DES) shall administer implementation of this Order. The Director of DES, or the Director's designee(s), shall convene any necessary workgroups to establish best practices and consistent application of this Order statewide. It shall report on the progress and impact of this Order to the Office of the Governor, including any recommendations to further the purpose of this Order, no later than July 1, 2019 and;

I urge all other employers, public and private, to join me in this effort to protect workers' rights.

This Order is effective immediately.

This Order is not intended to confer, and does not confer, any legal right or entitlement, and shall not be used as a basis for legal challenges to any rule or to any other action or inaction of the governmental entities and employees subject to it.

Signed and sealed with the official seal of the state of Washington on this 12th day of June, 2018, at Olympia, Washington.

By:

/s/

Jay Inslee
Governor

BY THE GOVERNOR:

/s/

Secretary of State

HIGHLIGHTS - SUMMARY

- Effective Date
 - Immediately
 - Forward looking
- Recitals
 - Focus is employee rights
 - Not encouraging firms to diminish employees' right to pursue collective action
- Obligations
 - Procurement Procedures (Section 1)
 - Agency Leadership (Section 2)


'TYPE' OF EXECUTIVE ORDER

■ Three types of Executive Orders:

1. General Policy Statements

- General policy statement made by the Governor.
- The EO does NOT have the force and effect of law.
- The purpose of the EO is to persuade or encourage people to accomplish the Governor's policy.

2. Directives

- 
- A directive from the Governor to state agencies communicating to those agencies what the Governor wants the agency to accomplish .
 - The EO does NOT have the force of law
 - But, agency heads serve at the pleasure of the Governor.

3. Operative Effect

- Requires that certain actions be taken.
- DOES have the force of law and serves as a source of authority for actions taken in response to the EO.

■ EO 18-03 is ... a Directive

STATE PROCUREMENT PRIORITIES

Vendor

- Small Businesses
- Washington Vendors
- Diverse Businesses
- Veteran-Owned Businesses
- Blind
- Correctional Industries

Products

- Blind-Made Products
- Environmentally Preferable Products
- Persistent Toxic Chemicals-Free Products
- Washington Grown Foods

Socio-Economic

- Wage Theft
- Pay Equality
- Mandatory Individual Arbitration & Class Action Waivers

AGENCY LEADERSHIP

Executive Order 18-03 (Section 2)

EO 18-03 §2 – AGENCY LEADERSHIP

“To ensure operational success and consistent application of this Order across state agencies, the Department of Enterprise Services (DES) shall administer implementation of this Order. The Director of DES, or the Director’s designee(s), shall convene any necessary workgroups to establish best practices and consistent application of this Order statewide. It shall report on the progress and impact of this Order to the Office of the Governor, including any recommendations to further the purpose of this Order, no later than July 1, 2019”
See EO 18-03 at § 2

ENTERPRISE SERVICES' OBLIGATIONS

Administrative

- Administer implementation of the EO

Collaboration & Implementation

- Convene any necessary workgroups to establish best practices and consistent application of the EO statewide

Reporting & Recommendations

- Report progress and impact of the EO to the Governor – including any recommendations to further the purpose of the EO – by July 1, 2019

WHAT IS ENTERPRISE SERVICES DOING TO IMPLEMENT THE EO?

Communication

Enterprise Services is providing information and awareness



Collaboration

Enterprise Services is working with stakeholders to identify and establish best practices to implement the EO statewide



Create Value

Enterprise Services, working with stakeholders, is developing recommended tools and practices for agencies to implement the EO in a value-added fashion

PROCUREMENT PROCEDURES

Executive Order 18-03 (Section 1)

EO 18-03 §1 – PROCUREMENT PROCEDURES

“To the extent permissible under state and federal law, when making purchasing and other procurement decisions, all state executive and small cabinet agencies shall seek to contract with qualified entities and business owners that can demonstrate or will certify that their employees are not required to sign, as a condition of employment, mandatory individual arbitration clauses and clause or collective action waivers.”
See EO 18-03 at § 1

REQUIREMENTS

- EO is a 'directive' ... aspirational
- “To the extent permissible”
- Covered Entities:
 - State executive agencies
 - Small cabinet agencies
- Covered Purchasing & Procurement
- “Shall seek to contract”

OBLIGATION

- Shall seek to contract with qualified entities and business owners who –
 - Demonstrate or certify that employees are not required to sign, as a condition of employment, mandatory individual arbitration clauses and class or collective action waivers

COLLABORATIVE IMPLEMENTATION ROADMAP

The Path to Done

HOW TO GET TO DONE

A hand-drawn action plan template. The title 'ACTION PLAN' is written in large blue letters at the top. Below it is a table with four columns labeled 'WHO', 'WHAT', 'WHEN', and 'NOW' in red letters. The table has two empty rows for entries. The entire drawing is framed in green with two red dots at the top, resembling binder holes.

WHO	WHAT	WHEN	NOW

TIMELINE

EO 18-03

• June 12, 2018

Enterprise
Services & AGO

• June/July 2018

Stakeholder
Sessions

• August 2 & 29, 2018

Stakeholder Input

• September 2018

Collaborative All
Teams Wrap Up

• October 11, 2018

Policy & Training

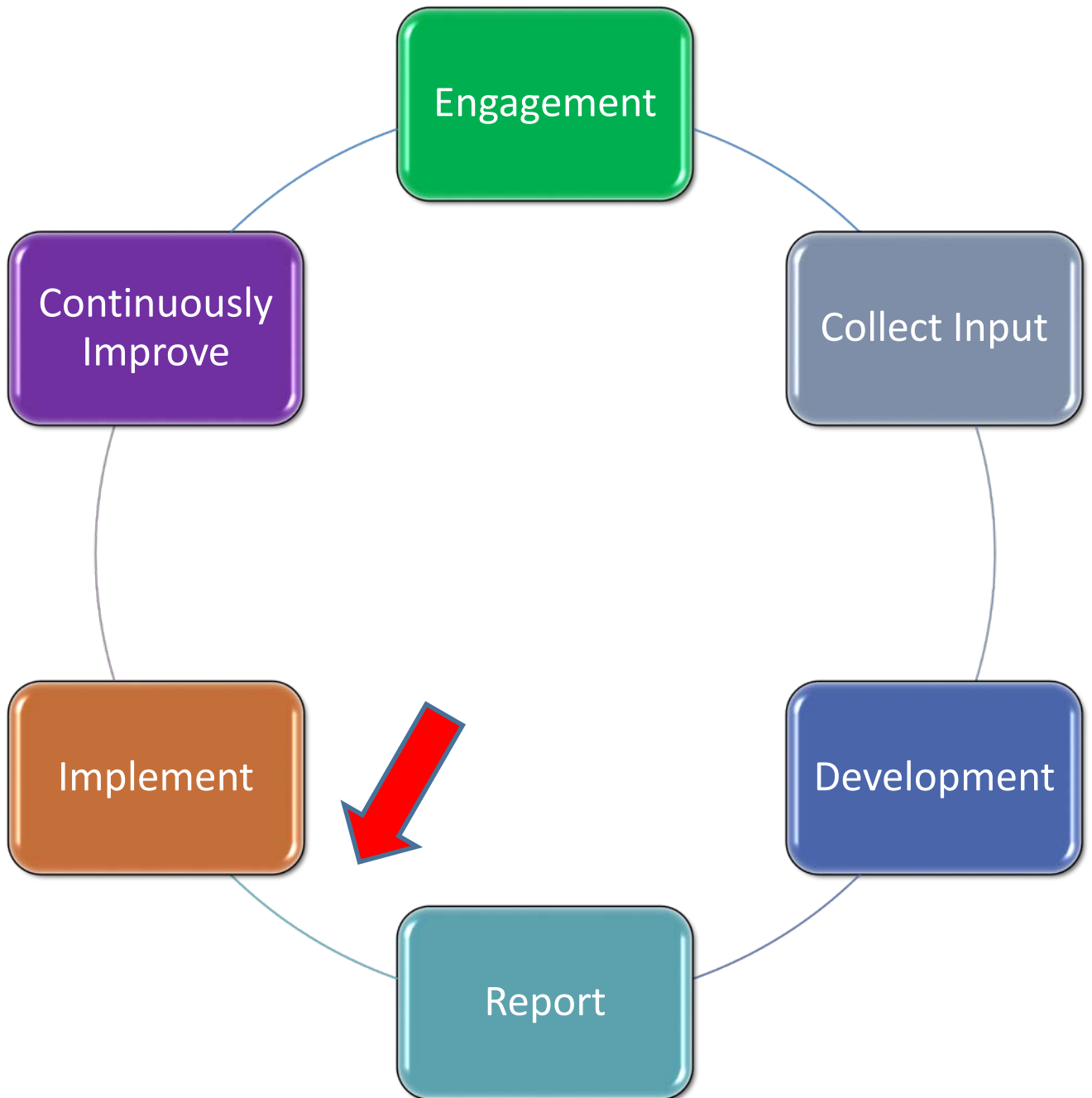
• Winter 2019

Implement

• Spring/Summer 2019



ACTION PLAN



ENGAGEMENT

The image shows a Microsoft Word document with the following elements:

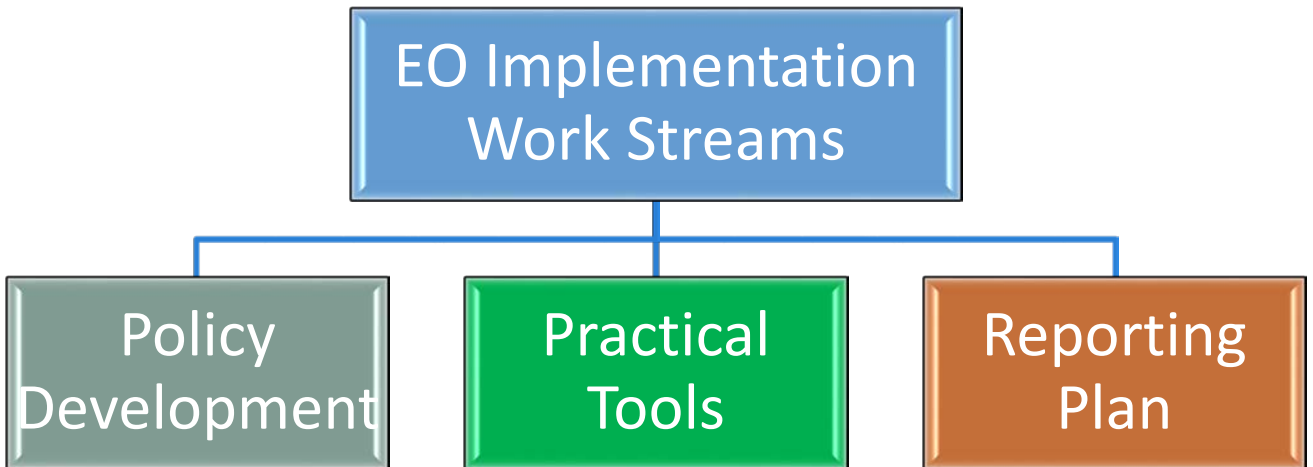
- Menu Bar:** File, Home, Insert, Page Layout, References, Mailings, Review, View, Design, Layout.
- Header:** A large, bold, red title "I WANT TO VOLUNTEER" centered at the top of the page.
- Table:** A table with 6 columns and 15 rows. The columns are labeled: VOLUNTEER NAME, PHONE (HOME), PHONE (CELL), EMAIL, AREA OF EXPERTISE/INTEREST, and DAYS/TIMES AVAILABLE. The rows are numbered 1 through 15 on the left side.
- Footer:** Page: 1 of 2, Words: 70, English (U.S.), 48% zoom.

	VOLUNTEER NAME	PHONE (HOME)	PHONE (CELL)	EMAIL	AREA OF EXPERTISE/INTEREST	DAYS/TIMES AVAILABLE
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						

VOLUNTEERS

- Attorney General's Office
- Department of Financial Institutions
- Department of Health
- Department of Social & Health Services
- Enterprise Services – Procurement Policy
- Health Care Authority
- Department of Revenue

WORK STREAMS



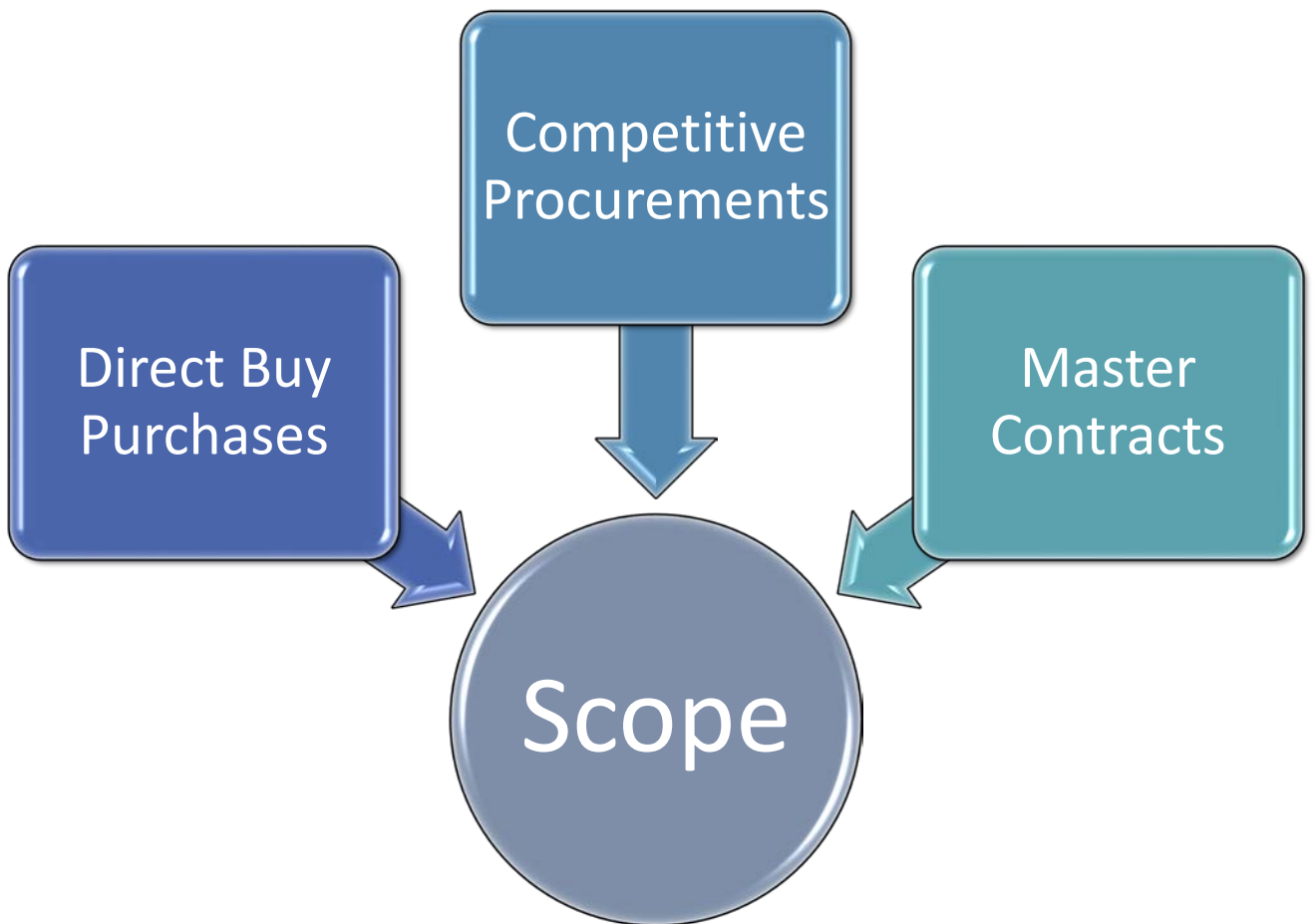
PROPOSED IMPLEMENTATION

- Prioritization
- Tools
- Reporting
- Guidance

IMPLEMENTATION PRIORITIZATION



SCOPE



PRACTICAL TOOLS

GOAL & HURDLES

- Goal: Identify and develop common, flexible tools to empower covered agencies
- Hurdles:
 - Covered agencies purchase and procure goods & services in a variety of different approaches
 - Although competitive procurements offer a leverageable opportunity to differentiate contractors, the opportunity (if any) is substantially less for direct buy purchases

RESULTS – AVAILABLE TOOLS

Contractor
Certification
Competitive
Procurement

EO 18-03
Backgrounder

Vendor
Certification
Noncompetitive
Procurement

FAQs

Training

Includes: All of the above in a step by step desk aid along with a document explaining EO 18-03. May be tracked using the LMS.

REPORTING PLAN

GOAL & HURDLES

- Goal: Identify and develop a simple, low transaction cost, reporting plan
- Hurdles:
 - Washington State does NOT have a single e-procurement system or even a shared electronic contracts reporting system
 - Focusing only on outcome overlooks or possibly de-incentivizes agency effort
 - Need to be cognizant of One-Washington's efforts
 - Should consider Master Contract portfolio
 - Significant statewide spend, but most are legacy contracts (amend or rebid)

RESULTS & RECOMMENDATIONS

- Reporting Focus:
 - Start with competitive procurements
- Measure/Report
 - Agency Effort
 - Outcome
- Use WEBS to Measure/Report
 - Agency Effort
 - Outcome



RESULTS & RECOMMENDATIONS, CONT.

- Measure/Report Agency Effort
 - Require agencies to identify in WEBS posting whether EO 18-03 is addressed in agency competitive procurements
 - Note: This requires WEBS modification
- Measure/Report Agency Outcome
 - Report dollar spend
 - For Master Contracts spend, use Enterprise Services' Vendor Sales Report, which will identify certified vendors

POLICY DEVELOPMENT

GOAL & HURDLES

- Goal: Identify and develop a procurement policy that enables covered agencies to implement EO 18-03 efficiently
- Hurdles:
 - Covered agencies purchase and procure goods & services in a variety of different approaches
 - Policy should distinguish between mandatory and discretionary
 - Mandatory: Competitive procurements
 - Discretionary: Direct Buy purchases
 - Policy should distinguish between effort & outcome
 - EO 18-03 preference should be limited to 5%

RESULTS

- Policy should set floor and address:
 - Impacted agencies
 - Scope – e.g., competitive procurements
 - Effort – i.e., obligation to address EO 18-03 in WEBS
 - Outcome – seek to contract with certified vendors (e.g., Master Contracts)
- Draft *Policy regarding Executive Order 18-03* (dated May 23, 2019)

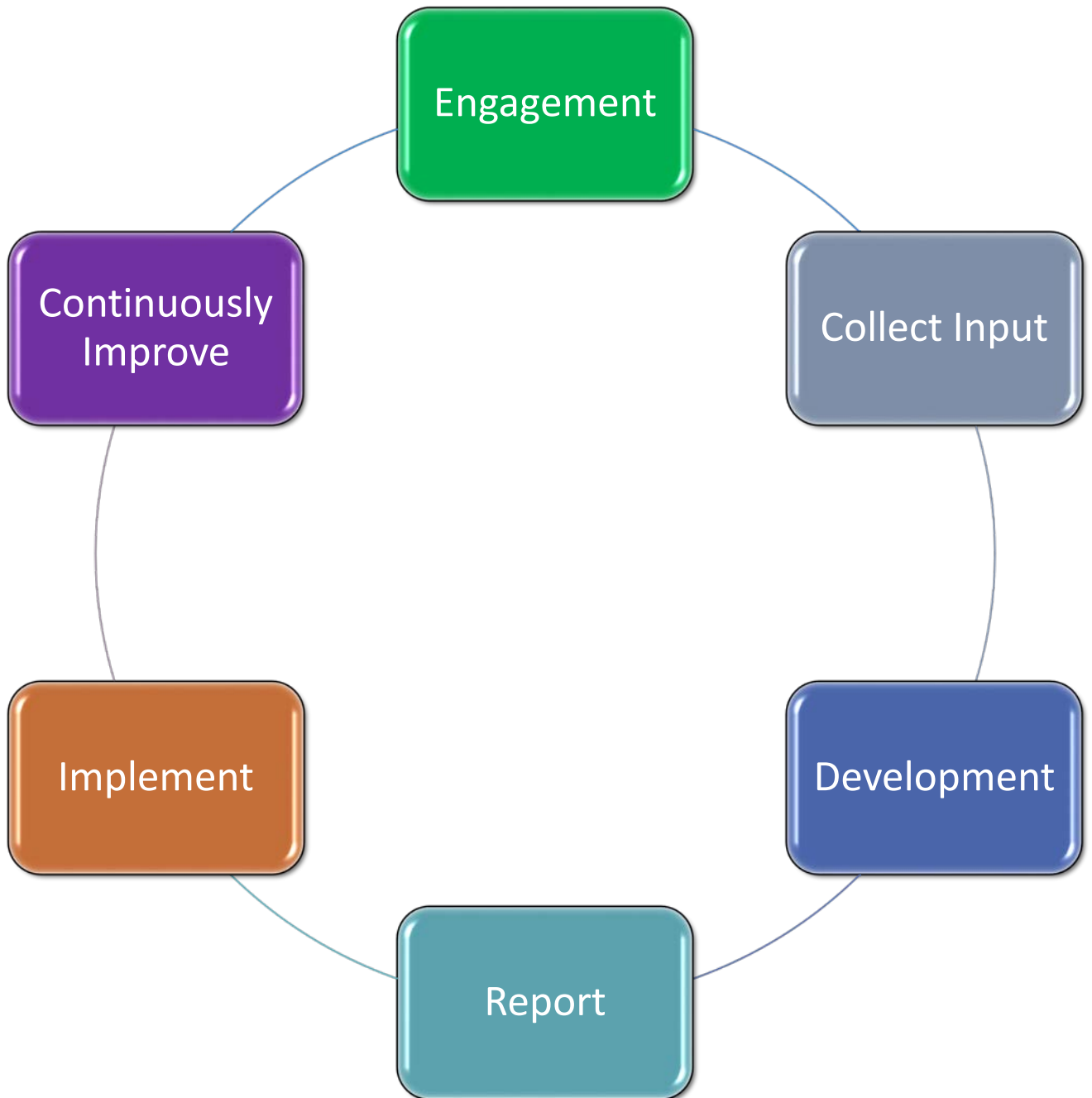
WHAT ELSE HAVE WE
LEARNED?

OPPORTUNITIES

- Training/Support Resources
- Communication

- <https://www.youtube.com/watch?v=pics11W6hhA>

NEXT STEPS



To Do – FOR ENTERPRISE SERVICES

- ❑ Continuously Improve: Work with covered agencies to understand operational issues and continuously improve
- ❑ Modify WEBS functionality
- ❑ Incorporate EO 18-03 into statewide Master Contracts
- ❑ Keep EO 18-03 resources current
- ❑ Prepare for Report to Governor (due July 1, 2019)
- ❑ Communicate, Collaborate, & Create Value

To Do – FOR COVERED AGENCIES

Engage

- Tools

- Training

Implement

- Competitive Procurements for goods and services

- Direct buy – common sense

Optimize

- For Master Contracts usage, seek to contract with certified vendors

TO DONE – ENTERPRISE SERVICES’ PILOT COMPETITIVE PROCUREMENTS

Contract	Preference	Solicitation	Award
00918 IT Cabling	5/165 points	13/14 Bidders	Yes
02318 Propane	5%	5/6 Bidders	Yes
02918 Survey & Mapping	5%	4/4 Bidders	Yes
03418 Audio Visual Solutions	5%	12/13 Bidders	Yes
04518 Bulk Foods	5%	4/4 Bidders	Yes
18-0003 Parking OIMS	2%	2/2 Bidders	Yes

TO DONE – ENTERPRISE SERVICES’ PILOT COMPETITIVE PROCUREMENTS

Contract	Preference	Solicitation	Award
04218 Translation Services	5%		
00418 HVAC Parts and Services	2%		
05918 Food Service Disposables	2%		
01019 Fresh Fruit and Vegetables	5%		
03118 Transit Buses	0.8%		
00419 Document Destruction	5%		
00919 Airfare	2%		

THANK YOU

Questions?