



Enterprise Services Policy No. POL-DES-EO 18-03

Policy Regarding Executive Order 18-03

Stakeholder Engagement Executive Summary

PUBLISH DATE: July 11, 2024

1. Objectives

- The aims of this executive summary are to:
 - Provide the general stakeholders with information about the efforts made by the Department of Enterprise Services (DES) in updating the EO 18-03 Policy.
 - Outline feedback received and DES' responses to feedback received, where appropriate.
 - Provide analysis of the survey conducted and feedback received.

2. Efforts

- DES sent out a survey to stakeholders (state agencies) on March 1, 2024 to identify gaps in the policy and seek feedback on how to improve the policy. The survey closed on March 15, 2024.
- DES used the 2023 Legislative Report to inform the initial proposed policy changes.
- DES made formatting and administrative changes to make the policy easier to follow and more user-friendly.

3. Analysis

- DES asked the following survey questions:
 1. Has this policy helped your agency implement Executive Order 18-03?
 2. Has your agency noticed any impacts to its competitive solicitation process when it used the policy?
 3. If yes to question 2, please describe.
 4. Do you recommend any changes to the current policy? (i.e., specific areas that need clarification, requests for additional guidelines, questions, etc.).
- DES reviewed and analyzed feedback and revised the policy and related documents to incorporate recommendations received from

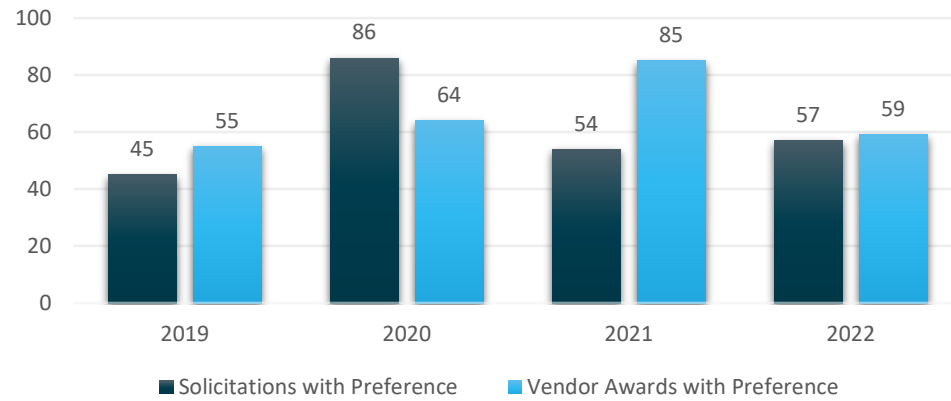
stakeholders (refer to Appendix A below).

- 39 stakeholders completed the survey.
 - 54.41% (22 respondents) said the policy helped their agencies implement the EO 18-3, 17.94% (7 respondents) said it did not help their agencies implement the EO 18-3, and 23.07% (9 respondents) answered neither yes, nor no. The remaining 2.56% was the DES Training Team with additional language suggestion.
 - 17.94% (7) said the policy impacted their competitive solicitation processes.
 - Six (6) or 15.38% of the seven (7) respondents provided information about how the policy impacted their procurement processes.
 - Several comments indicated that there have been close solicitations where the 18-03 preference has made a difference in the apparent successful bidder(s).
 - One comment indicated that some vendors from out of state have refused to bid on solicitations with this clause attached.

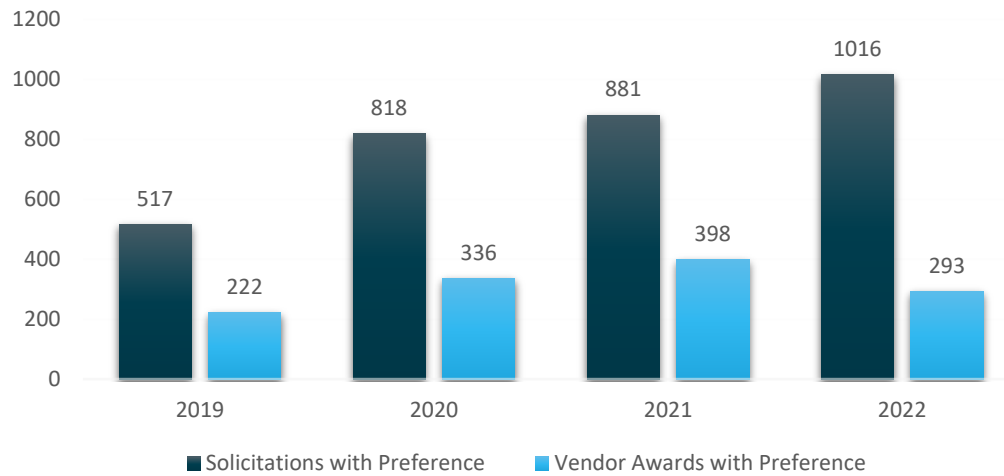
4. Background

- On June 12, 2018, the Governor's Office issued EO 18-03 to address workplace violations.
- Executive Order 18-03 (Order) directs covered state agencies, to the extent permissible under state and federal law, to seek to contract with persons and firms who do not, as a condition of employment, require employees to agree to mandatory individual arbitration, and/or class or collective action waivers.
- The Order requires state agencies to encourage and support employers who demonstrate they value workers' rights to collectively address workplace disputes.
- In 2018, DES collaborated with state agencies and partners to establish best practices and strategies to implement the Order, including policy, procedure (Desk Aid), and training resources to help state agencies follow the Order.
- The Order requires DES to report to the Governor's Office on the progress and impact of the Order. The following graphs extracted from the report submitted to the Legislature in May 2023 the results for statewide and all agencies' contracts from 2019 to 2022, reflects that the intent of the EO is being successfully met. This is due to a significant amount of state spend that is through DES' statewide contracts and in most cases the preference is applied, meaning that most purchases are with vendors who certify that its employees are not required, as a condition of employment, to agree to mandatory individual arbitration requirements and class or collective action waivers.

Executive Order 18-03 Statewide Contracts



Executive Order 18-03



Appendix A

Has this policy helped your agency implement Executive Order 18-03?	Has your agency noticed any impacts to its competitive solicitation process when it used the policy?	If yes to question 2, please describe.	Do you recommend any changes to the current policy? (i.e., specific areas that need clarification, requests for additional guidelines, questions, etc.).	DES' Responses
Yes	No		No changes needed.	
No	No		Discontinue it	
No	Unknown		Require the policy be explicitly included (featured, even) in initial and refresher trainings for agency contract managers.	We brought this comment to the attention of the DES Training Team.
			no	
No	Unknown			
	No			
Yes	No		To quote "On public works projects we hold retainage against the contractor that is not released until L&I, ESD, and DOR consent that no debts are due elsewhere. We are not required to hold retainage for this type of contract, but I was wondering if there is a similar option to help insure the employees are paid. Otherwise, we send the check to [the contractor] and expect they will pocket the full amount." It would be interesting if this could be explored for non-public works contracts.	The current EO 18-03 Policy states "covered agencies may choose to extend this policy requirement beyond goods and/or services procurements to competitive purchases and procurements for public works, real estate, financial, etc." However, this next level approach will be considered for the next refresh cycle.
Yes	Yes	Some vendors from out of state have refused to bid on solicitations with this clause attached.	None.	

Has this policy helped your agency implement Executive Order 18-03?	Has your agency noticed any impacts to its competitive solicitation process when it used the policy?	If yes to question 2, please describe.	Do you recommend any changes to the current policy? (i.e., specific areas that need clarification, requests for additional guidelines, questions, etc.).	DES' Responses
Yes	Yes	There have been close solicitations where the 18-03 preference has made a difference in the ASB.	No.	
Yes	No		Please clarify the extra points - the EO says an extra 5% will be added to their scores, but it doesn't say 5% OF WHAT. 5% of total points available? 5% of their earned points? Something else?	We clarified this in the FAQ document with examples. Please see question #28 of the FAQ document.
Yes	No			
Yes	No		It is doing its job. All contractors are reporting honoring the intent.	
			No recommendations.	
No	Yes	The preference points for 18-03 has occasionally been enough to be the different between awarded and not awarded on a solicitation.	The policy doesn't help to implement 18-03, it just says to have a certification and preference, but not how to do that.	We clarified this in the FAQ document.
			No	
Yes	No			
			no	
No	No		Sunset it. It makes no difference to how the state does business in procurement.	
			No. we have been complying with this requirement for a long time now. WSP	
Yes	No			
No	No			
Yes	No		No	
	Unknown			

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	No			
No	No			
	Yes	<p>It's always a component that we outline in our procurement documentation and explain during our procurement webinars. In my 5 years in this role as a contracts specialist I haven't had any respondents identify themselves as requiring an arbitration agreement as a condition of employment, so I can't quantify if the policy has been effective at changing behaviors. However, I almost always get questions via email or in the webinar asking me to provide more clarity.</p>	<p>I think the way the policy is articulated makes sense and is clear. However, it always feels like a tricky correlation to explain (if yes then no, if no then yes). I've had potential bidders ask clarifying questions via email and during webinars. Maybe it would be good to write out the specific examples:</p> <p>Example 1: If Bidder does require an arbitration agreement with employees as a condition of employment, then Bidder would get zero points for this question.</p> <p>Example 2: If Bidder does NOT require an arbitration agreement with employees as a condition of employment, then the bidder would get xx points.</p>	<p>We clarified this in the FAQ document with examples. Please see question #28 of the FAQ document.</p>
Yes	Unknown			
Yes	Unknown			

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Yes	Unknown		<p>I cannot recommend something to improve this policy as during my time (10/2021), I have only seen one circumstance where a company has reported a requirement for their staff to participate in a mandatory arbitration clause during disputes.</p> <p>I think this is a great requirement we should consider to be a bigger matter to determine eligibility for any party to do business with the WA State. By mandating companies NOT have this requirement would likely be some value of hindrance from the start, but I imagine it will generate the change to push companies to remove their arbitration clauses. If larger companies do not wish to remove these clauses to conduct business with WA State, this is a vessel for new emerging companies to compete for the WA State's business by offering the same goods or services while taking away the arbitration clause from its staff (thus serving the State's goal).</p>	
Yes	Unknown			
Yes	Unknown			

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Yes	Yes	This language is now included as a requirement in all our solicitations and extra points are awarded to companies who certifies in the bidder response form that their firm does not require its employees to sign or agree to mandatory individual arbitration clause, etc.	No.	
Yes	Yes	Sometimes the preference points could be the difference between a more ideal bidder making it to the top selection over the less ideal bidder that received the points.	no	
Yes	Yes			
Yes	No		N/A	
Yes	Unknown	unsure if you are asking about positive impacts, or negative impacts. For statewide solicitations that are awarded, In my experience, most businesses that bid comply with this EO, but not all of them. I have not noticed that the points given to this was the difference between being awarded a bid, or not.	no	

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Yes	No		I feel like the current policy has worked fine for the competitive solicitations that I coordinate and administer. I do not feel that any changes that would alter the current implementation would be necessary.	
Yes	No		No	
	Unknown			