

HOUSE BILL NO. 4741

June 20, 2019, Introduced by Reps. Tate, Chirkun, Sabo, Cambensy, Koleszar and Filler and referred to the Committee on Government Operations.

A bill to amend 1984 PA 431, entitled "The management and budget act," by amending sections 241 and 261 (MCL 18.1241 and 18.1261), section 241 as amended by 2012 PA 430 and section 261 as amended by 2017 PA 21.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 241. (1) Except for the contracts permitted in section
- 2 240, a contract shall not be awarded for the construction, repair,
- 3 remodeling, or demolition of a facility unless the contract is let



1 pursuant to a bidding procedure that is approved by the board. The
 2 department shall issue directives prescribing procedures to be used
 3 to implement this section. The procedures shall require a
 4 competitive solicitation in the award of any contract for
 5 construction, repair, remodeling, or demolition of a facility.

6 (2) The department may award or approve the award, if the
 7 board approves, of construction contracts to construct a project
 8 for which the director is the agent and may expend, for the
 9 purposes and in the manner set forth, the amounts appropriated. The
 10 director is not the agent for a community college or institution of
 11 higher education, but may act in that capacity upon the specific
 12 request of a community college or institution of higher education.

13 (3) In awarding a contract under this section, the department
 14 shall give a preference ~~of up to 10% of the amount of the contract~~
 15 **to a veteran-owned small business and** to a qualified disabled
 16 veteran, ~~as defined in the same manner as provided~~ in section 261.
 17 If the qualified disabled veteran otherwise meets the requirements
 18 of the contract solicitation and with the preference is the lowest
 19 bidder, the department shall enter into a construction contract
 20 with the qualified disabled veteran under this act. If 2 or more
 21 qualified disabled veterans are the lowest bidders on a contract,
 22 all other things being equal, the qualified disabled veteran with
 23 the lowest bid shall be awarded the contract under this act. **As**
 24 **used in this subsection, "qualified disabled veteran" and "veteran-**
 25 **owned small business" mean those terms as defined in section 261.**

26 (4) Subject to subsection (3), for projects funded in whole or
 27 part with state funds, the construction contract award shall be
 28 made to the responsive and responsible best value bidder. As used
 29 in this subsection, "responsive and responsible best value bidder"



1 means a bidder who meets all the following:

2 (a) A bidder who complies with all bid specifications and
3 requirements.

4 (b) A bidder who has been determined by the department to be
5 responsible by the following criteria:

6 (i) The bidder's financial resources.

7 (ii) The bidder's technical capabilities.

8 (iii) The bidder's professional experience.

9 (iv) The bidder's past performance.

10 (v) The bidder's insurance and bonding capacity.

11 (vi) The bidder's business integrity.

12 (c) A bidder who has been selected by the department through a
13 selection process that evaluates the bid on both price and
14 qualitative components to determine what is the best value for this
15 state. Qualitative components may include, but are not limited to,
16 all of the following:

17 (i) Technical design.

18 (ii) Technical approach.

19 (iii) Quality of proposed personnel.

20 (iv) Management plans.

21 Sec. 261. (1) The department shall provide for the purchase
22 of, the contracting for, and the providing of supplies, materials,
23 services, insurance, utilities, third party financing, equipment,
24 printing, and all other items as needed by state agencies for which
25 the legislature has not otherwise expressly provided. If consistent
26 with federal ~~statutes,~~ **law**, in all purchases made by the
27 department, all other things being equal, **except as otherwise**
28 **provided in this subsection**, preference shall be given to products



1 manufactured or services offered by Michigan-based firms or by
2 facilities with respect to which the operator **of a facility that** is
3 designated as a clean corporate citizen under part 14 of the
4 natural resources and environmental protection act, 1994 PA 451,
5 MCL 324.1401 to 324.1429, or to biobased products whose content is
6 sourced in this state. The department shall solicit competitive
7 bids from the private sector whenever practicable to efficiently
8 and effectively meet the state's needs. The department shall first
9 determine that competitive solicitation of bids in the private
10 sector is not appropriate before using any other procurement method
11 for an acquisition. **If consistent with federal law, a preference of**
12 **5% of the amount of the contract shall be granted to a veteran-**
13 **owned small business located in this state.**

14 (2) The department shall make all discretionary decisions
15 concerning the solicitation, award, amendment, cancellation, and
16 appeal of state contracts.

17 (3) The department shall utilize competitive solicitation for
18 all purchases authorized under this act unless 1 or more of the
19 following apply:

20 (a) Procurement of goods or services is necessary for the
21 imminent protection of public health or safety or to mitigate an
22 imminent threat to public health or safety, as determined by the
23 director or his or her designated representative.

24 (b) Procurement of goods or services is for emergency repair
25 or construction caused by unforeseen circumstances when the repair
26 or construction is necessary to protect life or property.

27 (c) Procurement of goods or services is in response to a
28 declared state of emergency or state of disaster under the
29 emergency management act, 1976 PA 390, MCL 30.401 to 30.421.



1 (d) Procurement of goods or services is in response to a
2 declared state of emergency under 1945 PA 302, MCL 10.31 to 10.33.

3 (e) Procurement of goods or services is in response to a
4 declared state of energy emergency under 1982 PA 191, MCL 10.81 to
5 10.89.

6 (f) Procurement of goods or services is within a state
7 agency's purchasing authority delegated under subsection (4), and
8 the state agency has established policies or procedures approved by
9 the department to ensure that goods or services are purchased by
10 the state agency at fair and reasonable prices.

11 (4) The department may delegate its procurement authority to
12 other state agencies within dollar limitations and for designated
13 types of procurements. The department may withdraw delegated
14 authority upon a finding that a state agency did not comply with
15 departmental procurement directives.

16 (5) The department may enter into lease purchases or
17 installment purchases for periods not exceeding the anticipated
18 useful life of the items purchased unless otherwise prohibited by
19 law.

20 (6) The department shall issue directives for the procurement,
21 receipt, inspection, and storage of supplies, materials, and
22 equipment, and for printing and services needed by state agencies.
23 The department shall provide standard specifications and standards
24 of performance applicable to purchases.

25 (7) The department may enter into a cooperative purchasing
26 agreement with 1 or more other states or public entities for the
27 purchase of goods, including, but not limited to, recycled goods,
28 and services necessary for state programs.

29 (8) In awarding a contract under this section, the department



1 shall give a preference of ~~up to~~ 10% of the amount of the contract
 2 to a qualified disabled veteran. If the qualified disabled veteran
 3 otherwise meets the requirements of the contract solicitation and
 4 with the preference is the lowest bidder, the department shall
 5 enter into a procurement contract with the qualified disabled
 6 veteran under this act. If 2 or more qualified disabled veterans
 7 are the lowest bidders on a contract, all other things being equal,
 8 the qualified disabled veteran with the lowest bid shall be awarded
 9 the contract under this act.

10 (9) It is the goal of the department to award each year not
 11 less than 5% of its total expenditures for construction, goods, and
 12 services to qualified disabled veterans. The department may count
 13 toward its 5% yearly goal described in this subsection that portion
 14 of all procurement contracts in which the business entity that
 15 received the procurement contract subcontracts with a qualified
 16 disabled veteran. Each year, the department shall report to each
 17 house of the legislature on all of the following for the
 18 immediately preceding 12-month period:

19 (a) The number of qualified disabled veterans who submitted a
 20 bid for a state procurement contract.

21 (b) The number of qualified disabled veterans who entered into
 22 procurement contracts with this state and the total value of those
 23 procurement contracts.

24 (c) Whether the department achieved the goal described in this
 25 subsection.

26 (d) The recommendations described in subsection (10).

27 (10) Each year, the department shall review the progress of
 28 all state agencies in meeting the 5% goal with input from statewide
 29 veterans service organizations and from the business community,



1 including businesses owned by qualified disabled veterans, and
2 shall make recommendations to each house of the legislature
3 regarding continuation, increases, or decreases in the percentage
4 goal. The recommendations shall be based upon the number of
5 businesses that are owned by qualified disabled veterans and on the
6 continued need to encourage and promote businesses owned by
7 qualified disabled veterans.

8 (11) To assist the department in reaching the goal described
9 in subsection (9), the governor shall recommend to the legislature
10 changes in programs to assist businesses owned by qualified
11 disabled veterans.

12 (12) Beginning October 1, 2017, the department and all state
13 agencies may not enter into a contract with a person to acquire or
14 dispose of supplies, services, or information technology unless the
15 contract includes a representation that the person is not currently
16 engaged in, and an agreement that the person will not engage in,
17 the boycott of a person based in or doing business with a strategic
18 partner.

19 (13) The following records are exempt from disclosure under
20 the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246,
21 as provided in this subsection:

22 (a) A bid, quote, or proposal submitted in connection with the
23 authority granted under this section, and records created in the
24 preparation for and evaluation of the bid, quote, or proposal until
25 the time of final notification of award of the contract.

26 (b) Records containing a trade secret as defined under section
27 2 of the uniform trade secrets act, 1998 PA 448, MCL 445.1902, or
28 financial or proprietary information submitted in connection with
29 the authority granted under this section.



1 (14) As used in this section:

2 (a) "Biobased product" means a product granted the United
3 States Department of Agriculture certified biobased product label.

4 (b) "Boycott" means refusal to have dealings with, divest
5 from, or otherwise engage with a person. Boycott does not include 1
6 or more of the following:

7 (i) A decision based on bona fide business or economic reasons.

8 (ii) A boycott against a public entity of a foreign state when
9 the boycott is applied in a nondiscriminatory manner.

10 (iii) Conduct necessary to comply with applicable law in the
11 person's home jurisdiction.

12 (c) "Financial or proprietary information" means information
13 that has not been publicly disseminated or which is unavailable
14 from other sources, the release of which might cause the submitter
15 of the information competitive harm.

16 (d) "Person" means any of the following:

17 (i) An individual, corporation, company, limited liability
18 company, business association, partnership, society, trust, or any
19 other nongovernmental entity, organization, or group.

20 (ii) Any governmental entity or agency of a government.

21 (iii) Any successor, subunit, parent company, or subsidiary of,
22 or company under common ownership or control with, any entity
23 described in subparagraph (i) or (ii).

24 (e) "Qualified disabled veteran" means a business entity that
25 is 51% or more owned by 1 or more veterans with a service-connected
26 disability.

27 (f) "Service-connected disability" means a disability incurred
28 or aggravated in the line of duty in the active military, naval, or
29 air service as described in 38 USC 101(16).



1 (g) "Strategic partner" means a strategic partner described in
2 22 USC 8601 to 8606.

3 (h) "Veteran" means an individual who meets both of the
4 following:

5 (i) Is a veteran as defined in section 1 of 1965 PA 190, MCL
6 35.61.

7 (ii) Was released from his or her service with an honorable or
8 general discharge.

9 (i) "Veteran-owned small business" means a veteran-owned small
10 business that has received a verification from the United States
11 Department of Veterans Affairs center for verification and
12 evaluation or a veteran-owned small business that is otherwise
13 qualified as determined by the department.

