

**SUBSTITUTE FOR
HOUSE BILL NO. 5622**

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 2020 PA
174.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 241. (1) Except for the contracts permitted in section
2 240, a contract ~~shall~~**must** not be awarded for the construction,
3 repair, remodeling, or demolition of a facility unless the contract
4 is let ~~pursuant to~~**in accordance with** a bidding procedure that is
5 approved by the board. The department shall issue directives
6 prescribing procedures to be used to implement this section. The
7 procedures ~~shall~~**must** require a competitive solicitation in the



award of any contract for construction, repair, remodeling, or demolition of a facility.

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

(3) All other things being equal, the department shall provide preference to bids for contracts under this section submitted by vendors possessing a fair paycheck workplace certificate.

~~(4) (3)~~ In awarding a contract under this section, the department shall give a preference of up to 10% of the amount of the contract to a qualified disabled veteran. ~~, as defined in section 261.~~ If the qualified disabled veteran otherwise meets the requirements of the contract solicitation and with the preference is the lowest bidder, the department ~~shall~~ **must** enter into a construction contract with the qualified disabled veteran under this act. If 2 or more qualified disabled veterans are the lowest bidders on a contract, all other things being equal, the qualified disabled veteran with the lowest bid ~~shall~~ **must** be awarded the contract under this act.

~~(5) (4)~~ ~~Subject to~~ **Except as otherwise provided in** subsection (3), **and subject to subsection (4)**, for projects funded in whole or part with state funds, the construction contract award ~~shall~~ **must** be made to the responsive and responsible best value bidder.

(6) As used in this subsection, "responsive ~~section:~~

(a) "Employer" means that term as defined in section 3 of the



1 fair paycheck workplace certificate act.

2 (b) "Fair paycheck workplace certificate" means that term as
3 defined in section 3 of the fair paycheck workplace certificate
4 act.

5 (c) "Qualified disabled veteran" means that term as defined in
6 section 261.

7 (d) "Qualitative components" includes, but is not limited to,
8 all of the following:

9 (i) Technical design.

10 (ii) Technical approach.

11 (iii) Quality of proposed personnel.

12 (iv) Management plans.

13 (e) "Responsive and responsible best value bidder" means a
14 bidder ~~who~~ **that** meets all the following:

15 (i) ~~(a)~~ A bidder ~~who~~ **that** complies with all bid specifications
16 and requirements.

17 (ii) ~~(b)~~ A bidder ~~who~~ **that** has been determined by the
18 department to be responsible by the following criteria:

19 (A) ~~(i)~~ The bidder's financial resources.

20 (B) ~~(ii)~~ The bidder's technical capabilities.

21 (C) ~~(iii)~~ The bidder's professional experience.

22 (D) ~~(iv)~~ The bidder's past performance.

23 (E) ~~(v)~~ The bidder's insurance and bonding capacity.

24 (F) ~~(vi)~~ The bidder's business integrity.

25 (iii) ~~(c)~~ A bidder ~~who~~ **that** has been selected by the department
26 through a selection process that evaluates the bid on both price
27 and qualitative components to determine what is the best value for
28 this state. ~~Qualitative components may include, but are not limited~~



1 ~~to, all of the following:~~

2 ~~(i) Technical design.~~

3 ~~(ii) Technical approach.~~

4 ~~(iii) Quality of proposed personnel.~~

5 ~~(iv) Management plans.~~

6 Sec. 261. (1) The department shall provide for the purchase
7 of, the contracting for, and the providing of supplies, materials,
8 services, insurance, utilities, ~~third party~~ **third-party** financing,
9 equipment, printing, and all other items as needed by state
10 agencies for which the legislature has not otherwise expressly
11 provided. If consistent with federal ~~statutes,~~ **law**, in all
12 purchases made by the department, all other things being equal,
13 preference ~~shall~~ **must** be given to products manufactured or services
14 offered by Michigan-based firms or by facilities with respect to
15 which the operator is designated as a clean corporate citizen under
16 part 14 of the natural resources and environmental protection act,
17 1994 PA 451, MCL 324.1401 to 324.1429, or to biobased products
18 whose content is sourced in this state. The department shall
19 solicit competitive bids from the private sector whenever
20 practicable to efficiently and effectively meet the state's needs.
21 The department shall first determine that competitive solicitation
22 of bids in the private sector is not appropriate before using any
23 other procurement method for an acquisition.

24 (2) The department shall make all discretionary decisions
25 concerning the solicitation, award, amendment, cancellation, and
26 appeal of state contracts.

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



1 (a) Procurement of goods or services is necessary for the
2 imminent protection of public health or safety or to mitigate an
3 imminent threat to public health or safety, as determined by the
4 director or ~~his or her~~ **the** designated representative **of the**
5 **director.**

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

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

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

14 **(d)** ~~(e)~~ Procurement of goods or services is in response to a
15 declared state of energy emergency under 1982 PA 191, MCL 10.81 to
16 10.89.

17 **(e)** ~~(f)~~ Procurement of goods or services is within a state
18 agency's purchasing authority delegated under subsection (4), and
19 the state agency has established policies or procedures approved by
20 the department to ensure that goods or services are purchased by
21 the state agency at fair and reasonable prices.

22 (4) The department may delegate its procurement authority to
23 other state agencies within dollar limitations and for designated
24 types of procurements. The department may withdraw delegated
25 authority ~~upon~~ **on** a finding that a state agency did not comply with
26 departmental procurement directives. If a state agency has the
27 department's procurement authority delegated to it under this
28 subsection and if it chooses to exercise an option under an
29 existing procurement contract to continue that procurement



1 contract, before exercising that option, the state agency ~~shall~~
2 **must** first obtain written approval from the department that
3 exercising the option is in the best interest of this state.

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

8 (6) The department shall issue directives for the procurement,
9 receipt, inspection, and storage of supplies, materials, and
10 equipment, and for printing and services needed by state agencies.
11 The department shall provide standard specifications and standards
12 of performance applicable to purchases.

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

17 (8) In awarding a contract under this section, the department
18 shall give a preference of up to 10% of the amount of the contract
19 to a qualified disabled veteran. If the qualified disabled veteran
20 otherwise meets the requirements of the contract solicitation and
21 with the preference is the lowest bidder, the department ~~shall~~**must**
22 enter into a procurement contract with the qualified disabled
23 veteran under this act. If 2 or more qualified disabled veterans
24 are the lowest bidders on a contract, all other things being equal,
25 the qualified disabled veteran with the lowest bid ~~shall~~**must** be
26 awarded the contract under this act.

27 (9) It is the goal of the department to award each year not
28 less than 5% of its total expenditures for construction, goods, and
29 services to qualified disabled veterans. The department may count



1 toward its 5% yearly goal described in this subsection that portion
2 of all procurement contracts in which the business entity that
3 received the procurement contract subcontracts with a qualified
4 disabled veteran. Each year, the department shall report to each
5 house of the legislature on all of the following for the
6 immediately preceding 12-month period:

7 (a) The number of qualified disabled veterans ~~who~~**that**
8 submitted a bid for a state procurement contract.

9 (b) The number of qualified disabled veterans ~~who~~**that** entered
10 into procurement contracts with this state and the total value of
11 those procurement contracts.

12 (c) Whether the department achieved the goal described in this
13 subsection.

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

15 (10) Each year, the department shall review the progress of
16 all state agencies in meeting the 5% goal with input from statewide
17 veterans service organizations and from the business community,
18 including businesses owned by qualified disabled veterans, and
19 shall make recommendations to each house of the legislature
20 regarding continuation, increases, or decreases in the percentage
21 goal. The recommendations ~~shall~~**must** be based ~~upon~~**on** the number of
22 businesses that are owned by qualified disabled veterans and on the
23 continued need to encourage and promote businesses owned by
24 qualified disabled veterans.

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

29 (12) Beginning October 1, 2017, the department and all state



1 agencies may not enter into a contract with a person to acquire or
2 dispose of supplies, services, or information technology unless the
3 contract includes a representation that the person is not currently
4 engaged in, and an agreement that the person will not engage in,
5 the boycott of a person based in or doing business with a strategic
6 partner.

7 **(13) All other things being equal, the department shall**
8 **provide preference to bids for contracts under this section**
9 **submitted by vendors possessing a fair paycheck workplace**
10 **certificate.**

11 **(14)** ~~(13)~~—The following records are exempt from disclosure
12 under the freedom of information act, 1976 PA 442, MCL 15.231 to
13 15.246, as provided in this subsection:

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

18 (b) Records containing a trade secret, as **that term is** defined
19 under section 2 of the uniform trade secrets act, 1998 PA 448, MCL
20 445.1902, or financial or proprietary information submitted in
21 connection with the authority granted under this section.

22 **(15)** ~~(14)~~—The department shall develop policies and procedures
23 that require all procurement contracts entered into by the
24 department or a state agency, including departments that have
25 delegated procurement authority under this act, to include
26 performance-related liquidated damages or performance targets with
27 incentives in all procurement contracts. The department shall also
28 develop policies and procedures that require the department or
29 state agency to enforce these provisions. Departments or state



1 agencies acting under delegated authority shall inform the
 2 department of relevant performance issues. Exceptions to the
 3 inclusion or enforcement of performance-related contract provisions
 4 may only be granted by the department as provided in a written or
 5 electronic record by the department.

6 **(16)** ~~(15)~~—As used in this section:

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

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

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

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

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

17 (c) **"Employer" means that term as defined in section 3 of the**
 18 **fair paycheck workplace certificate act.**

19 (d) **"Fair paycheck workplace certificate" means that term as**
 20 **defined in section 3 of the fair paycheck workplace certificate**
 21 **act.**

22 (e) ~~(e)~~—"Financial or proprietary information" means
 23 information that has not been publicly disseminated or ~~which~~ **that**
 24 is unavailable from other sources, the release of which might cause
 25 the submitter of the information competitive harm.

26 (f) ~~(d)~~—"Person" means any of the following:

27 (i) An individual, corporation, company, limited liability
 28 company, business association, partnership, society, trust, or any
 29 other nongovernmental entity, organization, or group.



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

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

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

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

(i) ~~(g)~~—"Strategic partner" means a strategic partner described in 22 USC 8601 to ~~8606~~-8607.

(j) ~~(h)~~—"Veteran" means an individual who meets both of the following:

(i) Is a veteran, as **that term is** defined in section 1 of 1965 PA 190, MCL 35.61.

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

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5625 of the 102nd Legislature is enacted into law.

