

HOUSE BILL No. 6041

May 4, 2006, Introduced by Reps. Moore, David Law, Baxter, Rocca, Mortimer, Casperson and Farhat and referred to the Committee on Commerce.

A bill to amend 1984 PA 431, entitled "The management and budget act," by amending sections 261 and 268 (MCL 18.1261 and 18.1268), section 261 as amended by 2005 PA 91 and section 268 as added by 1988 PA 237, and by adding section 268a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 261. (1) The department shall provide for the purchase
2 of, the contracting for, and the providing of supplies, materials,
3 services, insurance, utilities, third party financing, equipment,
4 printing, and all other items as needed by state agencies for which
5 the legislature has not otherwise expressly provided. In all
6 purchases made by the department, ~~all other things being equal,~~
7 preference shall be given to products manufactured or services

1 offered by Michigan-based firms, if consistent with federal
2 statutes. The department shall solicit competitive bids from the
3 private sector ~~whenever practicable~~ to efficiently and
4 effectively meet the state's needs. The department shall first
5 determine that competitive solicitation of bids in the private
6 sector is not appropriate before it shall use any other procurement
7 method for an acquisition.

8 (2) The department shall make all discretionary decisions
9 concerning the solicitation, award, amendment, cancellation, and
10 appeal of state contracts.

11 (3) The department shall utilize competitive bidding for all
12 purchases authorized pursuant to subsection (1) unless the
13 department has determined that ~~another procurement method is in~~
14 ~~the state's best interests~~ **AN EMERGENCY EXISTS. IF AN EMERGENCY**
15 **EXISTS, THE DEPARTMENT MAY USE ANOTHER PROCUREMENT METHOD THAT IS**
16 **IN THIS STATE'S BEST INTERESTS.**

17 (4) The department may delegate its procurement authority to
18 other state agencies within dollar limitations and for designated
19 types of procurements. The department may withdraw delegated
20 authority upon a finding that a state agency did not comply with
21 departmental procurement directives.

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

26 (6) The department shall issue directives for the procurement,
27 receipt, inspection, and storage of supplies, materials, and

1 equipment, and for printing and services needed by state agencies.
2 The department shall provide standard specifications and standards
3 of performance applicable to purchases.

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

8 (8) In awarding a contract under this section, the department
9 shall give a preference of up to 10% of the amount of the contract
10 to a qualified disabled veteran. If the qualified disabled veteran
11 otherwise meets the requirements of the contract solicitation and
12 with the preference is the lowest bidder, the department shall
13 enter into a procurement contract with the qualified disabled
14 veteran under this act. If 2 or more qualified disabled veterans
15 are the lowest bidders on a contract, all other things being equal,
16 the qualified disabled veteran with the lowest bid shall be awarded
17 the contract under this act.

18 (9) It is the goal of the department to award each year not
19 less than 3% of its total expenditures for construction, goods, and
20 services to qualified disabled veterans. The department may count
21 toward its 3% yearly goal described in this subsection that portion
22 of all procurement contracts in which the business entity that
23 received the procurement contract subcontracts with a qualified
24 disabled veteran. Each year, the department shall report to each
25 house of the legislature on all of the following for the
26 immediately preceding 12-month period:

27 (a) The number of qualified disabled veterans who submitted a

1 bid for a state procurement contract.

2 (b) The number of qualified disabled veterans who entered into
3 procurement contracts with this state and the total value of those
4 procurement contracts.

5 (c) Whether the department achieved the goal described in this
6 subsection.

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

8 (10) Each year, the department shall review the progress of
9 all state agencies in meeting the 3% goal with input from statewide
10 veterans service organizations and from the business community,
11 including businesses owned by qualified disabled veterans, and
12 shall make recommendations to each house of the legislature
13 regarding continuation, increases, or decreases in the percentage
14 goal. The recommendations shall be based upon the number of
15 businesses that are owned by qualified disabled veterans and on the
16 continued need to encourage and promote businesses owned by
17 qualified disabled veterans.

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

22 **(12) FOR THE PURCHASE OF GOODS OR SERVICES, THE DEPARTMENT**
23 **SHALL ISSUE A REQUEST FOR QUALIFICATIONS PRIOR TO SOLICITING BIDS**
24 **THAT COMPLIES WITH ALL OF THE FOLLOWING:**

25 **(A) THE REQUEST FOR QUALIFICATIONS SHALL BE PUBLISHED ON THE**
26 **DEPARTMENT'S WEBSITE.**

27 **(B) THE REQUEST FOR QUALIFICATIONS SHALL CONTAIN, AT A**

1 MINIMUM, A DESCRIPTION OF THE GOODS OR SERVICES TO BE PURCHASED
2 INCLUDING THE STANDARD SPECIFICATIONS AND STANDARDS OF PERFORMANCE
3 APPLICABLE TO THE PURCHASE, THE GENERAL SCOPE OF THE WORK, THE
4 DEADLINE FOR SUBMISSION OF INFORMATION, AND HOW PROSPECTIVE BIDDERS
5 MAY APPLY FOR CONSIDERATION. THE REQUEST FOR QUALIFICATIONS SHALL
6 BE BROADLY WRITTEN TO MAXIMIZE THE NUMBER OF COMPETITIVE BIDS.

7 (C) THE REQUEST FOR QUALIFICATIONS SHALL REQUIRE A PROSPECTIVE
8 BIDDER TO PROVIDE, AT A MINIMUM, ALL OF THE FOLLOWING INFORMATION:

9 (i) WHETHER THE PROSPECTIVE BIDDER IS A "CLASS 1 BIDDER",
10 "CLASS 2 BIDDER", OR "CLASS 3 BIDDER", AS THOSE TERMS ARE DEFINED
11 IN SECTION 268.

12 (ii) FOR GOODS, THE PROSPECTIVE BIDDER'S PRODUCT
13 SPECIFICATIONS.

14 (iii) FOR SERVICES, THE PROSPECTIVE BIDDER'S QUALIFICATIONS.

15 (iv) FOR GOODS AND SERVICES, THE PROSPECTIVE BIDDER'S
16 EXPERIENCE.

17 (v) THE PROSPECTIVE BIDDER'S ABILITY TO PERFORM THE
18 REQUIREMENTS OF THE CONTRACT.

19 (D) AFTER RECEIPT OF THE RESPONSES TO THE REQUEST FOR
20 QUALIFICATIONS FROM PROSPECTIVE BIDDERS, THE DEPARTMENT SHALL RANK
21 PROSPECTIVE BIDDERS IN THE ORDER OF MOST QUALIFIED TO LEAST
22 QUALIFIED ON THE BASIS OF THE INFORMATION SUBMITTED BY PROSPECTIVE
23 BIDDERS. IN RANKING PROSPECTIVE BIDDERS, PREFERENCE SHALL BE GIVEN
24 TO A CLASS 1 BIDDER OVER A CLASS 2 BIDDER, AND A CLASS 2 BIDDER
25 OVER A CLASS 3 BIDDER.

26 (E) THE DEPARTMENT SHALL ISSUE AN INVITATION TO BID TO AT
27 LEAST THE 2 TOP-RANKING PROSPECTIVE BIDDERS.

1 (13) ~~-(12)-~~ As used in this section:

2 (A) "EMERGENCY" MEANS AN ACT OF GOD, NATURAL DISASTER, ACT OF
3 TERRORISM, OR ACT OF WAR THAT HAS AFFECTED OR IS REASONABLY LIKELY
4 TO AFFECT THIS STATE.

5 (B) ~~-(a)-~~ "Qualified disabled veteran" means a business entity
6 that is 51% or more owned by 1 or more veterans with a service-
7 connected disability.

8 (C) ~~-(b)-~~ "Service-connected disability" means a disability
9 incurred or aggravated in the line of duty in the active military,
10 naval, or air service as described in 38 USC 101(16).

11 (D) ~~-(e)-~~ "Veteran" means a person who served in the active
12 military, naval, or air service and who was discharged or released
13 from his or her service under conditions other than dishonorable.

14 Sec. 268. ~~-(1) A bidder for a state contract is a Michigan~~
15 ~~business for the purposes of this section if it certifies that it~~
16 ~~has done any of the following during the 12 months immediately~~
17 ~~preceding the bid deadline or for the period the business has been~~
18 ~~in existence, if the business is newly established within the 12~~
19 ~~months immediately preceding the bid deadline:~~

20 ~~—— (a) Filed a Michigan single business tax return showing a~~
21 ~~portion or all of the income tax base allocated or apportioned to~~
22 ~~the state of Michigan pursuant to the Michigan single business tax~~
23 ~~act, Act No. 228 of the Public Acts of 1975, being sections 208.1~~
24 ~~to 208.145 of the Michigan Compiled Laws.~~

25 ~~—— (b) Filed a Michigan income tax return showing income~~
26 ~~generated in or attributed to the state of Michigan.~~

27 ~~—— (c) Withheld Michigan income tax from compensation paid to the~~

1 ~~bidder's owners and remitted the tax to the department of treasury.~~

2 ~~—— (2) The filing or withholding shall be more than a nominal~~
3 ~~filing for the purpose of gaining the status of a Michigan~~
4 ~~business, but shall indicate a significant business presence in the~~
5 ~~state, considering the size of the business and the nature of its~~
6 ~~activities.~~

7 ~~—— (3) A bidder certifying that it meets the criteria for a~~
8 ~~Michigan business listed in subsections (1) and (2) shall authorize~~
9 ~~the department of treasury to verify that the bidder has or has not~~
10 ~~met 1 of the 3 criteria in subsection (1). This authorization shall~~
11 ~~permit the department of treasury to disclose the verifying~~
12 ~~information to the procuring agency in accordance with the~~
13 ~~procedures established by section 28 of Act No. 122 of the Public~~
14 ~~Acts of 1941, being section 205.28 of the Michigan Compiled Laws.~~

15 (1) ~~—(4)—~~ Only a bidder that has certified that it is a
16 Michigan business is entitled to have the department apply a
17 reciprocal preference in its favor against a business that submits
18 a bid from a state which applies a preference law against out-of-
19 state bidders. A bidder that does not certify that it is a Michigan
20 business shall indicate in its bid the state in which it maintains
21 its principal place of business for the purpose of applying that
22 state's preference law against the bidder.

23 (2) ~~—(5)—~~ If the low bid for a state procurement exceeds
24 ~~\$100,000.00— \$25,000.00~~ and is from a business located in a state
25 which applies a preference law against out-of-state businesses, the
26 department shall prefer a bid from a Michigan business in the same
27 manner in which the out-of-state bidder would be preferred in its

1 home state.

2 (3) ~~-(6)-~~ The department shall compile a list of states that
3 give preference to in-state bidders and the extent of the
4 preference and shall update the list at least annually. An agency
5 may rely on this compilation in implementing the provisions of this
6 act without incurring liability to any bidder.

7 (4) ~~-(7)-~~ A bidder waives any entitlement to claim a
8 preference under this act if the bidder has not certified in its
9 bid that the bidder is a Michigan business and has not authorized
10 the department of treasury to release information necessary to
11 verify the entitlement.

12 (5) ~~-(8)-~~ A bidder shall not fraudulently certify that it is a
13 Michigan business under this act or falsely indicate the state in
14 which it has its principal place of business for the purpose of
15 avoiding application of the reciprocal preference.

16 (6) ~~-(9)-~~ A business, **OR THE PRINCIPALS OF A BUSINESS**, that
17 purposefully or willfully submits a false certification that it is
18 a Michigan business **OR A FALSE CERTIFICATION THAT IT QUALIFIES AS A**
19 **CLASS 1 OR CLASS 2 BIDDER** or **THAT** falsely indicates the state in
20 which it has its principal place of business is guilty of a felony
21 ~~—~~ punishable by a fine of not less than \$25,000.00.

22 (7) ~~-(10)- Two years after the effective date of this section,~~
23 ~~the department shall review the costs and consequences of~~
24 ~~implementing this section.~~ The department shall solicit input from
25 the business community and from state agencies ~~receiving~~
26 **INITIATING** procurements affected by the provisions of this section,
27 and shall make recommendations to the legislature regarding

1 continuation or modification of this section.

2 (8) ~~(11)~~ This section shall not apply to any procurement if
3 the provisions of this section would conflict with federal statute.

4 (9) WITHIN 6 MONTHS OF THE EFFECTIVE DATE OF THE AMENDATORY
5 ACT THAT ADDED THIS SUBSECTION, THE DEPARTMENT SHALL PROMULGATE
6 ADMINISTRATIVE RULES UNDER THE ADMINISTRATIVE PROCEDURES ACT OF
7 1969, 1969 PA 306, MCL 24.201 TO 24.328, GOVERNING THE PROCEDURES
8 FOR APPLYING FOR AND CERTIFYING A BIDDER'S CLASS.

9 (10) AS USED IN THIS ACT:

10 (A) "CLASS 1 BIDDER" MEANS EITHER OF THE FOLLOWING:

11 (i) A PERSON WHOSE PRINCIPAL PLACE OF BUSINESS OR THAT OF ITS
12 PARENT COMPANY IS LOCATED IN THIS STATE.

13 (ii) A PERSON THAT, AT THE TIME IT COMPLETES THE REQUEST FOR
14 QUALIFICATIONS, EMPLOYS AT LEAST 50% OF ITS EMPLOYEES IN THIS
15 STATE. A PERSON MAY QUALIFY AS A CLASS 1 BIDDER IF, IN COMBINATION
16 WITH ITS SUBCONTRACTOR OR SUBCONTRACTORS, IT EMPLOYS AT LEAST 50%
17 OF ITS EMPLOYEES IN THIS STATE AT THE TIME IT COMPLETES THE REQUEST
18 FOR QUALIFICATIONS.

19 (B) "CLASS 2 BIDDER" MEANS A PERSON THAT, AT THE TIME IT
20 COMPLETES THE REQUEST FOR QUALIFICATIONS, EMPLOYS AT LEAST 10% OF
21 ITS EMPLOYEES IN THIS STATE. A PERSON MAY QUALIFY AS A CLASS 2
22 BIDDER IF, IN COMBINATION WITH ITS SUBCONTRACTOR OR SUBCONTRACTORS,
23 IT EMPLOYS AT LEAST 10% OF ITS EMPLOYEES IN THIS STATE AT THE TIME
24 IT COMPLETES THE REQUEST FOR QUALIFICATIONS.

25 (C) "CLASS 3 BIDDER" MEANS A PERSON THAT DOES NOT QUALIFY AS A
26 CLASS 1 BIDDER OR CLASS 2 BIDDER.

27 SEC. 268A. THE DEPARTMENT SHALL REPORT TO THE SENATE AND HOUSE

1 OF REPRESENTATIVES COMMITTEES ON APPROPRIATIONS AND THE FISCAL
2 AGENCIES BEFORE JANUARY 30 OF EACH YEAR THE FOLLOWING INFORMATION
3 FOR CONTRACTS APPROVED BY THE STATE ADMINISTRATIVE BOARD BY
4 DEPARTMENT DURING THE IMMEDIATELY PRECEDING FISCAL YEAR:

5 (A) THE TOTAL NUMBER OF CONTRACTS AWARDED AND THE NUMBER OF
6 CONTRACTS AWARDED TO CLASS 1 BIDDERS, CLASS 2 BIDDERS, AND CLASS 3
7 BIDDERS.

8 (B) THE TOTAL VALUE OF CONTRACTS AWARDED AND THE TOTAL VALUE
9 OF CONTRACTS AWARDED TO CLASS 1 BIDDERS, CLASS 2 BIDDERS, AND CLASS
10 3 BIDDERS.

11 (C) FOR AWARDS IN WHICH COMPETING BIDS WERE SUBMITTED BY AT
12 LEAST 1 CLASS 1 BIDDER OR CLASS 2 BIDDER AND AT LEAST 1 CLASS 3
13 BIDDER, THE TOTAL NUMBER OF CONTRACTS AWARDED TO CLASS 1 BIDDERS
14 AND CLASS 2 BIDDERS COMPARED TO THE TOTAL NUMBER OF CONTRACTS
15 AWARDED TO CLASS 3 BIDDERS, AND THE VALUE OF CONTRACTS AWARDED TO
16 CLASS 1 BIDDERS AND CLASS 2 BIDDERS COMPARED TO THE TOTAL VALUE OF
17 CONTRACTS AWARDED TO CLASS 3 BIDDERS.