

**SUBSTITUTE FOR
SENATE BILL NO. 177**

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 2017 PA 21 and section 268 as amended by 2007 PA
183.

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. If consistent
6 with federal statutes, in all purchases made by the department, all

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

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

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

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

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

26 (c) Procurement of goods or services is in response to a
27 declared state of emergency or state of disaster under the

1 emergency management act, 1976 PA 390, MCL 30.401 to 30.421.

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

4 (e) Procurement of goods or services is in response to a
5 declared state of energy emergency under 1982 PA 191, MCL 10.81 to
6 10.89.

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

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

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

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

26 (7) The department may enter into a cooperative purchasing
27 agreement with 1 or more other states or public entities for the

1 purchase of goods, including, but not limited to, recycled goods,
2 and services necessary for state programs.

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

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

22 ~~—— (a) The number of qualified disabled veterans who submitted a~~
23 ~~bid for a state procurement contract.~~

24 ~~—— (b) The number of qualified disabled veterans who entered into~~
25 ~~procurement contracts with this state and the total value of those~~
26 ~~procurement contracts.~~

27 ~~—— (c) Whether the department achieved the goal described in this~~

1 subsection.

2 ~~—— (d) The recommendations described in subsection (10).~~

3 ~~—— (10) Each year, the department shall review the progress of~~
4 ~~all state agencies in meeting the 5% goal with input from statewide~~
5 ~~veterans service organizations and from the business community,~~
6 ~~including businesses owned by qualified disabled veterans, and~~
7 ~~shall make recommendations to each house of the legislature~~
8 ~~regarding continuation, increases, or decreases in the percentage~~
9 ~~goal. The recommendations shall be based upon the number of~~
10 ~~businesses that are owned by qualified disabled veterans and on the~~
11 ~~continued need to encourage and promote businesses owned by~~
12 ~~qualified disabled veterans.~~

13 ~~—— (11) To assist the department in reaching the goal described~~
14 ~~in subsection (9), the governor shall recommend to the legislature~~
15 ~~changes in programs to assist businesses owned by qualified~~
16 ~~disabled veterans.~~

17 (8) BEGINNING OCTOBER 1, 2017, THE DEPARTMENT AND ALL STATE
18 AGENCIES THAT HAVE HAD PROCUREMENT AUTHORITY DELEGATED TO THEM BY
19 THE DEPARTMENT SHALL AWARD CONTRACTS THEY AWARD UNDER THIS SECTION
20 WITH AN EXPECTED CONTRACT AWARD OF \$100,000.00 OR MORE BY USING A
21 BID SCORECARD SYSTEM THAT TALLIES CONTRACT BIDS BASED ON COST,
22 QUALITY, SERVICE, AND OTHER RELEVANT FACTORS AS DETERMINED BY THE
23 DEPARTMENT. THE BID SCORECARD SYSTEM SHALL PROVIDE FOR ALL OF THE
24 FOLLOWING:

25 (A) UNDER THE COST COMPONENT OF THE SCORECARD, THE DEPARTMENT
26 SHALL ASSIGN A PERCENTAGE PREFERENCE FOR CERTAIN VETERAN
27 BUSINESSES. WHEN APPLICABLE, WHERE A BID OR OFFER IS NOT FROM A

1 VETERAN BUSINESS, THE PREFERENCE SHALL BE APPLIED TO THE VETERAN
2 BUSINESS BIDS OFFERING A DOMESTIC SOURCE END PRODUCT OR SERVICE.
3 THE PERCENTAGE SHALL BE USED FOR EVALUATION PURPOSES ONLY. THE
4 VETERAN BUSINESS PERCENTAGE PREFERENCE SHALL BE AWARDED AS FOLLOWS
5 AS DETERMINED BY THE DEPARTMENT:

6 (i) A PREFERENCE OF NOT LESS THAN 2% WILL BE AWARDED FOR
7 EMPLOYEES WHO ARE VETERANS.

8 (ii) A PREFERENCE OF NOT LESS THAN 2% WILL BE AWARDED FOR
9 BUSINESSES OWNED BY A VETERAN.

10 (iii) A PREFERENCE OF NOT LESS THAN 2% WILL BE AWARDED FOR
11 BUSINESSES OWNED BY A QUALIFIED DISABLED VETERAN.

12 (B) UNDER THE COST COMPONENT OF THE SCORECARD, THE DEPARTMENT
13 SHALL ASSIGN A PERCENTAGE PREFERENCE OF 2% TO MICHIGAN-BASED FIRMS.
14 WHEN APPLICABLE, WHERE A BID OR OFFER IS NOT FROM A MICHIGAN-BASED
15 FIRM OR FROM A FIRM LOCATED IN A STATE THAT BORDERS THIS STATE, THE
16 2% PREFERENCE SHALL BE APPLIED TO THE MICHIGAN-BASED FIRM AND FIRMS
17 LOCATED IN STATES THAT BORDER THIS STATE THAT OFFER A DOMESTIC
18 SOURCE END PRODUCT OR SERVICE. THE PERCENTAGE SHALL BE USED FOR
19 EVALUATION PURPOSES ONLY.

20 (C) WHEN A REQUEST FOR PROPOSAL IS ISSUED BY THE DEPARTMENT OR
21 A STATE AGENCY THAT HAS HAD PROCUREMENT AUTHORITY DELEGATED TO IT
22 BY THE DEPARTMENT, THE REQUEST FOR PROPOSAL SHALL CLEARLY STATE HOW
23 THE FACTORS AND POINTS WILL BE AWARDED, SCALED, AND EVALUATED IN
24 THE BID SCORECARD SYSTEM.

25 (D) A BIDDER MAY USE SUBCONTRACTORS TO FULFILL THE
26 REQUIREMENTS FOR A PREFERENCE UNDER THIS SUBSECTION. HOWEVER, IF A
27 BIDDER WANTS TO USE A SUBCONTRACTOR TO FULFILL THE PREFERENCE

1 REQUIREMENTS IN THIS SUBSECTION, THAT SUBCONTRACTOR MUST BE
2 REGISTERED TO DO BUSINESS IN THIS STATE.

3 (9) THE BID SCORECARD SYSTEM DESCRIBED IN SUBSECTION (8) SHALL
4 ALSO PROVIDE THAT IF ANY CHANGE IS MADE TO THE EVALUATION CRITERIA
5 IN A REQUEST FOR PROPOSAL, THEN THE DEPARTMENT OR THE STATE AGENCY
6 THAT HAD PROCUREMENT AUTHORITY DELEGATED TO IT SHALL SIMULTANEOUSLY
7 COMMUNICATE THOSE CHANGES TO ALL BIDDERS ON THAT CONTRACT AND SHALL
8 ALSO SIMULTANEOUSLY COMMUNICATE ANY RESPONSES TO AN INQUIRY FROM AN
9 INDIVIDUAL BIDDER TO ALL BIDDERS ON THAT CONTRACT.

10 (10) AS LONG AS THE BIDDER MEETS THE MINIMUM TECHNICAL AND
11 ADMINISTRATIVE REQUIREMENTS AS DETERMINED BY THE DEPARTMENT, THE
12 DEPARTMENT SHALL AWARD THE CONTRACT TO THE BIDDER WITH THE HIGHEST
13 POINT TALLY DESCRIBED IN SUBSECTION (8) AS DETERMINED BY THE
14 DEPARTMENT.

15 (11) THE DEPARTMENT SHALL DEVELOP AUTOMATION TOOLS TO ASSIST
16 IN THE APPLICATION OF THE BID SCORECARD SYSTEM DESCRIBED IN
17 SUBSECTION (8) AND SHALL MAKE THE BID SCORECARD SYSTEM AVAILABLE TO
18 THE PUBLIC ON THE DEPARTMENT'S INTERNET WEBSITE.

19 (12) Beginning October 1, 2017, the department and all state
20 agencies may not enter into a contract with a person to acquire or
21 dispose of supplies, services, or information technology unless the
22 contract includes a representation that the person is not currently
23 engaged in, and an agreement that the person will not engage in,
24 the boycott of a person based in or doing business with a strategic
25 partner.

26 (13) The following records are exempt from disclosure under
27 the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246,

1 as provided in this subsection:

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

6 (b) Records containing a trade secret as defined under section
7 2 of the uniform trade secrets act, 1998 PA 448, MCL 445.1902, or
8 financial or proprietary information submitted in connection with
9 the authority granted under this section.

10 (14) As used in this section:

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

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

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

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

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

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

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

27 (i) An individual, corporation, company, limited liability

1 company, business association, partnership, society, trust, or any
2 other nongovernmental entity, organization, or group.

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

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

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

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

13 (g) "Strategic partner" means a strategic partner described in
14 22 USC 8601 to 8606.

15 (h) "Veteran" means an individual who meets both of the
16 following:

17 (i) Is a veteran as defined in section 1 of 1965 PA 190, MCL
18 35.61.

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

21 Sec. 268. (1) A bidder for a state contract is a Michigan
22 business for the purposes of this section if it certifies that it
23 has done any of the following during the 12 months immediately
24 preceding the bid deadline or for the period the business has been
25 in existence, if the business is newly established within the 12
26 months immediately preceding the bid deadline:

27 (a) Filed a Michigan ~~single-business tax return or Michigan~~

1 ~~business tax return~~ showing a portion or all of the income tax base
2 allocated or apportioned to the state of Michigan pursuant to ~~the~~
3 ~~former single business tax act, 1975 PA 228, or the Michigan~~
4 business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, **OR PART 2**
5 **OF THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.601 TO 206.699.**

6 (b) Filed a Michigan income tax return showing income
7 generated in or attributed to the state of Michigan.

8 (c) Withheld Michigan income tax from compensation paid to the
9 bidder's owners and remitted the tax to the department of treasury.

10 (2) The filing or withholding shall be more than a nominal
11 filing for the purpose of gaining the status of a Michigan
12 business, but shall indicate a significant business presence in the
13 state, considering the size of the business and the nature of its
14 activities.

15 (3) A bidder certifying that it meets the criteria for a
16 Michigan business listed in subsections (1), ~~and (2)~~, **AND (12)**
17 shall authorize the department of treasury to verify that the
18 bidder has or has not met 1 of the 3 criteria in subsection (1).
19 This authorization shall permit the department of treasury to
20 disclose the verifying information to the procuring agency in
21 accordance with the procedures established by section 28 of 1941 PA
22 122, MCL 205.28.

23 (4) Only a bidder that has certified that it is a Michigan
24 business is entitled to have the department apply a reciprocal
25 preference in its favor against a business that submits a bid from
26 a state which applies a preference law against out-of-state
27 bidders. A bidder that does not certify that it is a Michigan

1 business shall indicate in its bid the state in which it maintains
2 its principal place of business for the purpose of applying that
3 state's preference law against the bidder.

4 (5) If the low bid for a state procurement exceeds \$100,000.00
5 and is from a business located in a state which applies a
6 preference law against out-of-state businesses, the department
7 shall prefer a bid from a Michigan business in the same manner in
8 which the out-of-state bidder would be preferred in its home state.

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

14 (7) A bidder waives any entitlement to claim a preference
15 under this act if the bidder has not certified in its bid that the
16 bidder is a Michigan business and has not authorized the department
17 of treasury to release information necessary to verify the
18 entitlement.

19 (8) A bidder shall not fraudulently certify that it is a
20 Michigan business under this act or falsely indicate the state in
21 which it has its principal place of business for the purpose of
22 avoiding application of the reciprocal preference.

23 (9) A business that purposefully or willfully submits a false
24 certification that it is a Michigan business or ~~falsely indicates~~
25 ~~the state in which it has its principal place of business is guilty~~
26 ~~of a felony, punishable by a fine of not less than \$25,000.00.~~ **ANY**
27 **OTHER FALSE INFORMATION IN SUPPORT OF A BID IS RESPONSIBLE FOR A**

1 CIVIL VIOLATION, AND THE DEPARTMENT SHALL IMPOSE A CIVIL FINE
2 AGAINST THAT ENTITY IN AN AMOUNT EQUAL TO 10% OF THE CONTRACT VALUE
3 IN WHICH THE FALSE CERTIFICATION OR FALSE INFORMATION WAS MADE.

4 (10) Two years after October 1, 1988, the department shall
5 review the costs and consequences of implementing this section. The
6 department shall solicit input from the business community and from
7 state agencies receiving procurements affected by the provisions of
8 this section, and shall make recommendations to the legislature
9 regarding continuation or modification of this section.

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

12 (12) BEGINNING OCTOBER 1, 2017, BEFORE A BIDDER IS ELIGIBLE TO
13 BE CERTIFIED A MICHIGAN BUSINESS, THE BIDDER SHALL DISCLOSE TO THE
14 DEPARTMENT ALL OF THE FOLLOWING:

15 (A) THE NUMBER AND PERCENTAGE OF ITS EMPLOYEES WHO WORK MORE
16 THAN 20 HOURS PER WEEK AND WHO HAVE BEEN EMPLOYED BY THAT BUSINESS
17 FOR THE IMMEDIATE AND PRECEDING 90-DAY PERIOD WHO ARE RESIDENTS OF
18 THIS STATE.

19 (B) THE PERCENTAGE OF ITS EMPLOYEES WHO WORK MORE THAN 20
20 HOURS PER WEEK AND WHO HAVE BEEN EMPLOYED BY THAT BUSINESS FOR THE
21 IMMEDIATE AND PRECEDING 90-DAY PERIOD WHO ARE VETERANS.

22 (C) THE PERCENTAGE OF ITS EMPLOYEES WHO WORK MORE THAN 20
23 HOURS PER WEEK AND WHO HAVE BEEN EMPLOYED BY THAT BUSINESS FOR THE
24 IMMEDIATE AND PRECEDING 90-DAY PERIOD WHO ARE QUALIFIED DISABLED
25 VETERANS.

26 (13) BEGINNING OCTOBER 1, 2017, THE DEPARTMENT SHALL MAINTAIN
27 A LIST OF ALL MICHIGAN BUSINESSES CERTIFIED UNDER THIS SECTION ON

1 THE DEPARTMENT'S INTERNET WEBSITE.

2 (14) AS USED IN THIS SECTION, "QUALIFIED DISABLED VETERAN" AND

3 "VETERAN" MEAN THOSE TERMS AS DEFINED IN SECTION 261.