

HOUSE BILL No. 4733

June 8, 2017, Introduced by Reps. Chang, Hammoud, Geiss, Love, Neeley, Gay-Dagnogo, Cochran, Rabhi, Yanez, Sabo, Wittenberg, Howrylak, Byrd, Moss and Jones 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
4 pursuant to a bidding procedure that is approved by the board. The
5 department shall issue directives prescribing procedures to be used
6 to implement this section. The procedures shall require a
7 competitive solicitation in the award of any contract for

1 construction, repair, remodeling, or demolition of a facility.

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

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

19 **(4) BEGINNING OCTOBER 1, 2017, THE DEPARTMENT AND ALL STATE**
20 **AGENCIES SHALL NOT ENTER INTO A CONTRACT UNDER THIS SECTION WITH A**
21 **PERSON UNLESS THAT CONTRACT INCLUDES A REPRESENTATION THAT THE**
22 **PERSON IS NOT CURRENTLY, AND AN AGREEMENT THAT THE PERSON WILL NOT**
23 **BECOME, A PERSON THAT CONTRACTS TO BUILD A BORDER WALL, AS**
24 **DETERMINED BY THE DIRECTOR. AS USED IN THIS SECTION, "CONTRACTS TO**
25 **BUILD A BORDER WALL" MEANS THAT TERM AS DEFINED IN SECTION 261.**

26 (5) ~~(4)~~ Subject to ~~subsection~~ **SUBSECTIONS (3) AND (4)**, for
27 projects funded in whole or part with state funds, the construction

1 contract award shall be made to the responsive and responsible best
2 value bidder. As used in this subsection, "responsive and
3 responsible best value bidder" means a bidder who meets all the
4 following:

5 (a) A bidder who complies with all bid specifications and
6 requirements.

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

9 (i) The bidder's financial resources.

10 (ii) The bidder's technical capabilities.

11 (iii) The bidder's professional experience.

12 (iv) The bidder's past performance.

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

14 (vi) The bidder's business integrity.

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

20 (i) Technical design.

21 (ii) Technical approach.

22 (iii) Quality of proposed personnel.

23 (iv) Management plans.

24 Sec. 261. (1) The department shall provide for the purchase
25 of, the contracting for, and the providing of supplies, materials,
26 services, insurance, utilities, third party financing, equipment,
27 printing, and all other items as needed by state agencies for which

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

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

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

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

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

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

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

6 (e) Procurement of goods or services is in response to a
7 declared state of energy emergency under 1982 PA 191, MCL 10.81 to
8 10.89.

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

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

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

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

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

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

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

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

26 (b) The number of qualified disabled veterans who entered into
27 procurement contracts with this state and the total value of those

1 procurement contracts.

2 (c) Whether the department achieved the goal described in this
3 subsection.

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

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

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

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) BEGINNING OCTOBER 1, 2017, THE DEPARTMENT AND ALL STATE**
11 **AGENCIES SHALL NOT ENTER INTO A CONTRACT WITH A PERSON TO ACQUIRE**
12 **OR DISPOSE OF SUPPLIES, SERVICES, OR INFORMATION TECHNOLOGY UNLESS**
13 **THE CONTRACT INCLUDES A REPRESENTATION THAT THE PERSON IS NOT**
14 **CURRENTLY, AND AN AGREEMENT THAT THE PERSON WILL NOT BECOME, A**
15 **PERSON THAT CONTRACTS TO BUILD A BORDER WALL, AS DETERMINED BY THE**
16 **DIRECTOR. NOT LATER THAN 90 DAYS AFTER THE EFFECTIVE DATE OF THE**
17 **AMENDATORY ACT THAT ADDED THIS SUBSECTION, THE DIRECTOR SHALL**
18 **CREATE, PUBLISH, AND PERIODICALLY UPDATE A LIST, BASED ON CREDIBLE**
19 **EVIDENCE, OF PERSONS THAT CONTRACT TO BUILD A BORDER WALL.**

20 **(15) ~~(14)~~—As used in this section:**

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

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

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

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

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

5 **(C) "CONTRACTS TO BUILD A BORDER WALL" MEANS ENTERING INTO A**
6 **CONTRACT WITH THE FEDERAL GOVERNMENT FOR THE PURPOSES OF BUILDING A**
7 **WALL ALONG THE BORDER OF MEXICO AND THE UNITED STATES.**

8 **(D)** ~~(e)~~—"Financial or proprietary information" means
9 information that has not been publicly disseminated or which is
10 unavailable from other sources, the release of which might cause
11 the submitter of the information competitive harm.

12 **(E)** ~~(d)~~—"Person" means any of the following:

13 (i) An individual, corporation, company, limited liability
14 company, business association, partnership, society, trust, or any
15 other nongovernmental entity, organization, or group.

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

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

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

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

26 **(H)** ~~(g)~~—"Strategic partner" means a strategic partner
27 described in 22 USC 8601 to 8606.

1 **(I)** ~~(h)~~ "Veteran" means an individual who meets both of the
2 following:

3 *(i)* Is a veteran as defined in section 1 of 1965 PA 190, MCL
4 35.61.

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