

# SENATE BILL No. 177

February 22, 2017, Introduced by Senators COLBECK, JONES, ROBERTSON and EMMONS and referred to the Committee on Elections and Government Reform.

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 2016 PA 376 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  
7 other things being equal, preference shall be given to products  
8 manufactured or services offered by Michigan-based firms or by  
9 facilities with respect to which the operator is designated as a

1 clean corporate citizen under part 14 of the natural resources and  
2 environmental protection act, 1994 PA 451, MCL 324.1401 to  
3 324.1429, or to biobased products whose content is sourced in this  
4 state. The department shall solicit competitive bids from the  
5 private sector whenever practicable to efficiently and effectively  
6 meet the state's needs. The department shall first determine that  
7 competitive solicitation of bids in the private sector is not  
8 appropriate before using any other procurement method for an  
9 acquisition.

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

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

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

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

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

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

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

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

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

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

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

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

27 ~~(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~~

~~1 all state agencies in meeting the 5% goal with input from statewide  
2 veterans service organizations and from the business community,  
3 including businesses owned by qualified disabled veterans, and  
4 shall make recommendations to each house of the legislature  
5 regarding continuation, increases, or decreases in the percentage  
6 goal. The recommendations shall be based upon the number of  
7 businesses that are owned by qualified disabled veterans and on the  
8 continued need to encourage and promote businesses owned by  
9 qualified disabled veterans.~~

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

14 (8) BEGINNING OCTOBER 1, 2017, THE DEPARTMENT AND ALL STATE  
15 AGENCIES THAT HAVE HAD PROCUREMENT AUTHORITY DELEGATED TO THEM BY  
16 THE DEPARTMENT SHALL AWARD CONTRACTS THEY AWARD UNDER THIS SECTION  
17 WITH AN EXPECTED CONTRACT AWARD OF \$100,000.00 OR MORE BY USING A  
18 BID SCORECARD SYSTEM THAT TALLIES CONTRACT BIDS BASED ON TECHNICAL  
19 AND CRITICAL PERFORMANCE REQUIREMENTS, COST EVALUATION, AND LABOR  
20 EVALUATION. THE BID SCORECARD SYSTEM SHALL PROVIDE FOR ALL OF THE  
21 FOLLOWING:

22 (A) THE CRITICAL PERFORMANCE STANDARDS SHALL BE NUMERICAL AND  
23 VERIFIABLE AND SHALL COUNT FOR 10% OF THE POINTS ON THE BID  
24 SCORECARD.

25 (B) THE COST EVALUATION SHALL BE BASED ON THE BID PRICE AND  
26 SHALL COUNT FOR 70% OF THE POINTS ON THE BID SCORECARD.

27 (C) THE LABOR EVALUATION SHALL COUNT FOR 20% OF THE POINTS ON

1 THE BID SCORECARD AND, SUBJECT TO SUBDIVISION (D), THOSE POINTS  
2 SHALL BE AWARDED AS FOLLOWS AS DETERMINED BY THE DEPARTMENT:

3 (i) ONE QUARTER OF THOSE POINTS WILL BE AWARDED FOR EMPLOYEES  
4 WHO ARE RESIDENTS OF THIS STATE.

5 (ii) ONE QUARTER OF THOSE POINTS WILL BE AWARDED FOR EMPLOYEES  
6 WHO ARE VETERANS.

7 (iii) ONE QUARTER OF THOSE POINTS WILL BE AWARDED FOR  
8 BUSINESSES OWNED BY A VETERAN.

9 (iv) ONE QUARTER OF THOSE POINTS WILL BE AWARDED FOR  
10 BUSINESSES OWNED BY A QUALIFIED DISABLED VETERAN.

11 (D) THE SCOPE OF THE LABOR EVALUATION SHALL INCLUDE PRIME  
12 CONTRACTING AGENTS AND ANY OTHER BUSINESS THAT WILL FULFILL  
13 CONTRACT DELIVERY REQUIREMENTS AS A SUBCONTRACTOR TO A PRIME  
14 CONTRACTOR. THE DEPARTMENT SHALL USE A WEIGHTED SCALE IN JUDGING  
15 THE LABOR EVALUATION DESCRIBED IN SUBDIVISION (C) AND IN  
16 DETERMINING THE POINTS AWARDED IN SUBDIVISION (C) (i) TO (iv).

17 (E) THE DEPARTMENT SHALL USE A WEIGHTED SCALE IN JUDGING THE  
18 CRITICAL PERFORMANCE STANDARDS DESCRIBED IN SUBDIVISION (A) AND IN  
19 DETERMINING THE POINTS AWARDED IN SUBDIVISION (A).

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

27 (10) AS LONG AS THE BIDDER MEETS THE MINIMUM TECHNICAL AND

1 ADMINISTRATIVE REQUIREMENTS AS DETERMINED BY THE DEPARTMENT, THE  
2 DEPARTMENT SHALL AWARD THE CONTRACT TO THE BIDDER WITH THE HIGHEST  
3 POINT TALLY DESCRIBED IN SUBSECTION (8) AS DETERMINED BY THE  
4 DEPARTMENT.

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

9 (12) As used in this section:

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

12 (B) "CRITICAL PERFORMANCE STANDARDS" MEANS THE SPECIFIC  
13 TECHNICAL OR ADMINISTRATIVE REQUIREMENTS THAT THE GOVERNING  
14 PROCUREMENT AUTHORITY BELIEVES WOULD MERIT ADDITIONAL VALUE TO THE  
15 CITIZENS OF THIS STATE IF THEY WERE IMPROVED UPON.

16 (C) ~~(b)~~ "Qualified disabled veteran" means a business entity  
17 that is 51% or more owned by 1 or more veterans with a service-  
18 connected disability.

19 (D) ~~(e)~~ "Service-connected disability" means a disability  
20 incurred or aggravated in the line of duty in the active military,  
21 naval, or air service as described in 38 USC 101(16).

22 (E) ~~(d)~~ "Veteran" means an individual who meets both of the  
23 following:

24 (i) Is a veteran as defined in section 1 of 1965 PA 190, MCL  
25 35.61.

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

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

7           (a) Filed a Michigan ~~single-business tax return or Michigan~~  
8 ~~business tax return~~ showing a portion or all of the income tax base  
9 allocated or apportioned to the state of Michigan pursuant to ~~the~~  
10 former ~~single-business tax act~~, 1975 PA 228, ~~or the Michigan~~  
11 business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, **OR PART 2**  
12 **OF THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.601 TO 206.699.**

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

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

17           (2) The filing or withholding shall be more than a nominal  
18 filing for the purpose of gaining the status of a Michigan  
19 business, but shall indicate a significant business presence in the  
20 state, considering the size of the business and the nature of its  
21 activities.

22           (3) A bidder certifying that it meets the criteria for a  
23 Michigan business listed in subsections (1), ~~and (2)~~, **AND (12)**  
24 shall authorize the department of treasury to verify that the  
25 bidder has or has not met 1 of the 3 criteria in subsection (1).  
26 This authorization shall permit the department of treasury to  
27 disclose the verifying information to the procuring agency in



1 accordance with the procedures established by section 28 of 1941 PA  
2 122, MCL 205.28.

3 (4) Only a bidder that has certified that it is a Michigan  
4 business is entitled to have the department apply a reciprocal  
5 preference in its favor against a business that submits a bid from  
6 a state which applies a preference law against out-of-state  
7 bidders. A bidder that does not certify that it is a Michigan  
8 business shall indicate in its bid the state in which it maintains  
9 its principal place of business for the purpose of applying that  
10 state's preference law against the bidder.

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

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

21 (7) A bidder waives any entitlement to claim a preference  
22 under this act if the bidder has not certified in its bid that the  
23 bidder is a Michigan business and has not authorized the department  
24 of treasury to release information necessary to verify the  
25 entitlement.

26 (8) A bidder shall not fraudulently certify that it is a  
27 Michigan business under this act or falsely indicate the state in

1 which it has its principal place of business for the purpose of  
2 avoiding application of the reciprocal preference.

3 (9) A business that purposefully or willfully submits a false  
4 certification that it is a Michigan business or ~~falsely indicates~~  
5 ~~the state in which it has its principal place of business is guilty~~  
6 ~~of a felony, punishable by a fine of not less than \$25,000.00.~~ **ANY**  
7 **OTHER FALSE INFORMATION IN SUPPORT OF A BID IS RESPONSIBLE FOR A**  
8 **CIVIL VIOLATION, AND THE DEPARTMENT SHALL IMPOSE A CIVIL FINE**  
9 **AGAINST THAT ENTITY IN AN AMOUNT EQUAL TO 10% OF THE CONTRACT VALUE**  
10 **IN WHICH THE FALSE CERTIFICATION OR FALSE INFORMATION WAS MADE.**

11 (10) Two years after October 1, 1988, the department shall  
12 review the costs and consequences of implementing this section. The  
13 department shall solicit input from the business community and from  
14 state agencies receiving procurements affected by the provisions of  
15 this section, and shall make recommendations to the legislature  
16 regarding continuation or modification of this section.

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

19 (12) **BEGINNING OCTOBER 1, 2017, BEFORE A BIDDER IS ELIGIBLE TO**  
20 **BE CERTIFIED A MICHIGAN BUSINESS AND BEFORE A BIDDER IS ELIGIBLE TO**  
21 **BID FOR A STATE CONTRACT, THE BIDDER SHALL DISCLOSE TO THE**  
22 **DEPARTMENT ALL OF THE FOLLOWING:**

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

27 (B) **THE PERCENTAGE OF ITS EMPLOYEES WHO WORK MORE THAN 20**

1 HOURS PER WEEK AND WHO HAVE BEEN EMPLOYED BY THAT BUSINESS FOR THE  
2 IMMEDIATE AND PRECEDING 90-DAY PERIOD WHO ARE VETERANS.

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

7 (13) BEGINNING OCTOBER 1, 2017, THE DEPARTMENT SHALL MAINTAIN  
8 A LIST OF ALL MICHIGAN BUSINESSES CERTIFIED UNDER THIS SECTION ON  
9 THE DEPARTMENT'S INTERNET WEBSITE.

10 (14) AS USED IN THIS SECTION, "QUALIFIED DISABLED VETERAN" AND  
11 "VETERAN" MEAN THOSE TERMS AS DEFINED IN SECTION 261.