

HOUSE BILL NO. 4962

September 12, 2019, Introduced by Reps. Rabhi, Pohutsky, Sowerby, Sabo, Peterson, Hood, Gay-Dagnogo, Warren, Pagan, Kuppa, Elder and Guerra and referred to the Committee on Government Operations.

A bill to amend 1984 PA 431, entitled "The management and budget act," by amending section 261 (MCL 18.1261), as amended by 2017 PA 21, and by adding section 241d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **Sec. 241d. (1) Beginning on the effective date of the**
2 **amendatory act that added this section, the department and all**
3 **state agencies may not enter into a contract with a person for the**



1 construction, alteration, or repair of a state building, facility,
2 or other state property unless the contract includes a
3 representation that the person does not currently own, operate, or
4 manage, and an agreement that the person will not own, operate, or
5 manage during the term of the contract, a private detention
6 facility.

7 (2) As used in this section, "private detention facility"
8 means that term as defined in section 261.

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

27 (2) The department shall make all discretionary decisions
28 concerning the solicitation, award, amendment, cancellation, and
29 appeal of state contracts.



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

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

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

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

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

16 (e) Procurement of goods or services is in response to a
17 declared state of energy emergency under 1982 PA 191, MCL 10.81 to
18 10.89.

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

24 (4) The department may delegate its procurement authority to
25 other state agencies within dollar limitations and for designated
26 types of procurements. The department may withdraw delegated
27 authority upon a finding that a state agency did not comply with
28 departmental procurement directives.

29 (5) The department may enter into lease purchases or



1 installment purchases for periods not exceeding the anticipated
2 useful life of the items purchased unless otherwise prohibited by
3 law.

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

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

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

23 (9) It is the goal of the department to award each year not
24 less than 5% of its total expenditures for construction, goods, and
25 services to qualified disabled veterans. The department may count
26 toward its 5% yearly goal described in this subsection that portion
27 of all procurement contracts in which the business entity that
28 received the procurement contract subcontracts with a qualified
29 disabled veteran. Each year, the department shall report to each



1 house of the legislature on all of the following for the
2 immediately preceding 12-month period:

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

5 (b) The number of qualified disabled veterans who entered into
6 procurement contracts with this state and the total value of those
7 procurement contracts.

8 (c) Whether the department achieved the goal described in this
9 subsection.

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

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

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

25 (12) Beginning October 1, 2017, the department and all state
26 agencies may not enter into a contract with a person to acquire or
27 dispose of supplies, services, or information technology unless the
28 contract includes a representation that the person is not currently
29 engaged in, and an agreement that the person will not engage in,



1 the boycott of a person based in or doing business with a strategic
2 partner.

3 (13) The following records are exempt from disclosure under
4 the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246,
5 as provided in this subsection:

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

10 (b) Records containing a trade secret as defined under section
11 2 of the uniform trade secrets act, 1998 PA 448, MCL 445.1902, or
12 financial or proprietary information submitted in connection with
13 the authority granted under this section.

14 **(14) Beginning on the effective date of the amendatory act**
15 **that added this subsection, the department and all state agencies**
16 **may not enter into a contract with a person to acquire or dispose**
17 **of supplies, services, or information technology unless the**
18 **contract includes a representation that the person does not**
19 **currently own, operate, or manage, and an agreement that the person**
20 **will not own, operate, or manage during the term of the contract, a**
21 **private detention facility.**

22 (15) ~~(14)~~As used in this section:

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

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

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

29 (ii) A boycott against a public entity of a foreign state when



1 the boycott is applied in a nondiscriminatory manner.

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

4 (c) "Financial or proprietary information" means information
5 that has not been publicly disseminated or which is unavailable
6 from other sources, the release of which might cause the submitter
7 of the information competitive harm.

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

9 (i) An individual, corporation, company, limited liability
10 company, business association, partnership, society, trust, or any
11 other nongovernmental entity, organization, or group.

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

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

16 (e) **"Private detention facility" means any building, facility,**
17 **or structure used to detain individuals, not including state work**
18 **release centers or juvenile or adult residential treatment**
19 **facilities.**

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.

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



1 (i) Is a veteran as defined in section 1 of 1965 PA 190, MCL
2 35.61.

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

