

HOUSE BILL NO. 4374

February 25, 2021, Introduced by Reps. Tate, Tyrone Carter, Steenland, Neeley, Cavanagh and O'Neal and referred to the Committee on Commerce and Tourism.

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 2020 PA 174.

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,

1 remodeling, or demolition of a facility unless the contract is let
2 pursuant to a bidding procedure that is approved by the board. The
3 department shall issue directives prescribing procedures to be used
4 to implement this section. The procedures shall require a
5 competitive solicitation in the award of any contract for
6 construction, repair, remodeling, or demolition of a facility.

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

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

24 (4) Subject to ~~subsection~~**subsections (3) and (5)**, for
25 projects funded in whole or part with state funds, the construction
26 contract award shall be made to the responsive and responsible best
27 value bidder. As used in this subsection, "responsive and
28 responsible best value bidder" means a bidder who meets all the
29 following:

1 (a) A bidder who complies with all bid specifications and
2 requirements.

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

5 (i) The bidder's financial resources.

6 (ii) The bidder's technical capabilities.

7 (iii) The bidder's professional experience.

8 (iv) The bidder's past performance.

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

10 (vi) The bidder's business integrity.

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

16 (i) Technical design.

17 (ii) Technical approach.

18 (iii) Quality of proposed personnel.

19 (iv) Management plans.

20 **(5) In awarding a contract under this section, if consistent**
21 **with federal statutes and all other things being equal, the**
22 **department and all state agencies in which the department has**
23 **delegated procurement authority under this act, shall give**
24 **preference to a geographically disadvantaged business enterprise in**
25 **the same manner as provided in section 261. A "geographically**
26 **disadvantaged business enterprise" means that term as defined in**
27 **section 261.**

28 Sec. 261. (1) The department shall provide for the purchase
29 of, the contracting for, and the providing of supplies, materials,

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

18 (2) The department shall make all discretionary decisions
19 concerning the solicitation, award, amendment, cancellation, and
20 appeal of state contracts.

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

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

28 (b) Procurement of goods or services is for emergency repair
29 or construction caused by unforeseen circumstances when the repair

1 or construction is necessary to protect life or property.

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

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

7 (e) Procurement of goods or services is in response to a
8 declared state of energy emergency under 1982 PA 191, MCL 10.81 to
9 10.89.

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

15 (4) The department may delegate its procurement authority to
16 other state agencies within dollar limitations and for designated
17 types of procurements. The department may withdraw delegated
18 authority upon a finding that a state agency did not comply with
19 departmental procurement directives. If a state agency has the
20 department's procurement authority delegated to it under this
21 subsection and if it chooses to exercise an option under an
22 existing procurement contract to continue that procurement
23 contract, before exercising that option, the state agency shall
24 first obtain written approval from the department that exercising
25 the option is in the best interest of this state.

26 (5) The department may enter into lease purchases or
27 installment purchases for periods not exceeding the anticipated
28 useful life of the items purchased unless otherwise prohibited by
29 law.

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

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

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

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

29 (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 5% 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~~ **on** 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) Beginning October 1, 2017, the department and all state
23 agencies may not enter into a contract with a person to acquire or
24 dispose of supplies, services, or information technology unless the
25 contract includes a representation that the person is not currently
26 engaged in, and an agreement that the person will not engage in,
27 the boycott of a person based in or doing business with a strategic
28 partner.

29 (13) The following records are exempt from disclosure under

1 the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246,
2 as provided in this subsection:

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

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

11 (14) The department shall develop policies and procedures that
12 require all procurement contracts entered into by the department or
13 a state agency, including departments that have delegated
14 procurement authority under this act, to include performance-
15 related liquidated damages or performance targets with incentives
16 in all procurement contracts. The department shall also develop
17 policies and procedures that require the department or state agency
18 to enforce these provisions. Departments or state agencies acting
19 under delegated authority shall inform the department of relevant
20 performance issues. Exceptions to the inclusion or enforcement of
21 performance-related contract provisions may only be granted by the
22 department as provided in a written or electronic record by the
23 department.

24 **(15) It is the goal of the department to award each year not**
25 **less than 5% of all state agency total expenditures for**
26 **construction, goods, and services to geographically disadvantaged**
27 **business enterprises. The department may count toward its 5% yearly**
28 **goal described in this subsection that portion of all procurement**
29 **contracts in which the business entity that received the**

1 procurement contract subcontracts with a geographically
2 disadvantaged business enterprise. Each year, the department shall
3 report to each house of the legislature on all of the following for
4 the immediately preceding 12-month period:

5 (a) The number of geographically disadvantaged business
6 enterprises that submitted a bid for a state procurement contract.

7 (b) The number of geographically disadvantaged business
8 enterprises that entered into procurement contracts with this
9 state, a description of the contracted goods or services, and the
10 total value of those procurement contracts.

11 (c) Whether the department achieved the goal described in this
12 subsection.

13 (d) The recommendations described in subsection (16).

14 (16) Each year, the department shall review the progress of
15 all state agencies in meeting the 5% goal with input from
16 geographically disadvantaged business enterprises and from the
17 business community, and shall make recommendations to each house of
18 the legislature regarding continuation, increases, or decreases in
19 the percentage goal.

20 (17) To assist the department in reaching the goal described
21 in subsection (16), the governor shall recommend to the legislature
22 changes in programs to assist geographically disadvantaged business
23 enterprises.

24 (18) ~~(15)~~As used in this section:

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

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

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

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

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

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

10 (d) **"Geographically disadvantaged business enterprise" means a**
11 **person that satisfies 1 or more of the following:**

12 (i) **Is certified as a HUBZone small business concern by the**
13 **United States Small Business Administration.**

14 (ii) **Has a principal place of business located within a**
15 **qualified opportunity zone within this state.**

16 (iii) **More than half of its employees have a principal residence**
17 **located within a qualified opportunity zone within this state.**

18 (e) **"HUBZone small business concern" means that term as**
19 **defined under 13 CFR 126.103.**

20 (f) ~~(d)~~ **"Person" means any of the following:**

21 (i) **An individual, corporation, company, limited liability**
22 **company, business association, partnership, society, trust, or any**
23 **other nongovernmental entity, organization, or group.**

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

25 (iii) **Any successor, subunit, parent company, or subsidiary of,**
26 **or company under common ownership or control with, any entity**
27 **described in subparagraph (i) or (ii).**

28 (g) ~~(e)~~ **"Qualified disabled veteran" means a business entity**
29 **that is 51% or more owned by 1 or more veterans with a service-**

1 connected disability.

2 (h) "Qualified opportunity zone" means that term as defined in
3 26 USC 1400Z-1.

4 (i) ~~(f)~~—"Service-connected disability" means a disability
5 incurred or aggravated in the line of duty in the active military,
6 naval, or air service as described in 38 USC 101(16).

7 (j) ~~(g)~~—"Strategic partner" means a strategic partner
8 described in 22 USC 8601 to 8606.

9 (k) ~~(h)~~—"Veteran" means an individual who meets both of the
10 following:

11 (i) Is a veteran as defined in section 1 of 1965 PA 190, MCL
12 35.61.

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