

HOUSE BILL NO. 4993

June 15, 2021, Introduced by Rep. Tate 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 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,
3 remodeling, or demolition of a facility unless the contract is let

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

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

13 (3) 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 veteran-owned small business and** to a qualified disabled
16 veteran, ~~as defined in the same manner as provided~~ in section 261.
17 If the qualified disabled veteran otherwise meets the requirements
18 of the contract solicitation and with the preference is the lowest
19 bidder, the department shall enter into a construction contract
20 with the qualified disabled veteran under this act. If 2 or more
21 qualified disabled veterans are the lowest bidders on a contract,
22 all other things being equal, the qualified disabled veteran with
23 the lowest bid shall be awarded the contract under this act. **As**
24 **used in this subsection, "qualified disabled veteran" and "veteran-**
25 **owned small business" mean those terms as defined in section 261.**

26 (4) Subject to subsection (3), for projects funded in whole or
27 part with state funds, the construction contract award shall be
28 made to the responsive and responsible best value bidder. As used
29 in this subsection, "responsive and responsible best value bidder"

1 means a bidder who meets all the following:

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

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

6 (i) The bidder's financial resources.

7 (ii) The bidder's technical capabilities.

8 (iii) The bidder's professional experience.

9 (iv) The bidder's past performance.

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

11 (vi) The bidder's business integrity.

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

17 (i) Technical design.

18 (ii) Technical approach.

19 (iii) Quality of proposed personnel.

20 (iv) Management plans.

21 Sec. 261. (1) The department shall provide for the purchase
22 of, the contracting for, and the providing of supplies, materials,
23 services, insurance, utilities, third party financing, equipment,
24 printing, and all other items as needed by state agencies for which
25 the legislature has not otherwise expressly provided. If consistent
26 with federal ~~statutes,~~ **law**, in all purchases made by the
27 department, all other things being equal, **except as otherwise**
28 **provided in this subsection**, preference shall be given to products
29 manufactured or services offered by Michigan-based firms or by

1 facilities with respect to which the operator is designated as a
2 clean corporate citizen under part 14 of the natural resources and
3 environmental protection act, 1994 PA 451, MCL 324.1401 to
4 324.1429, or to biobased products whose content is sourced in this
5 state. The department shall solicit competitive bids from the
6 private sector whenever practicable to efficiently and effectively
7 meet the state's needs. The department shall first determine that
8 competitive solicitation of bids in the private sector is not
9 appropriate before using any other procurement method for an
10 acquisition. **If consistent with federal law, a preference of 5% of**
11 **the amount of the contract shall be granted to a veteran-owned**
12 **small business located in this state.**

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

29 (d) Procurement of goods or services is in response to a

1 declared state of emergency under 1945 PA 302, MCL 10.31 to 10.33.

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

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

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

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

25 (6) The department shall issue directives for the procurement,
26 receipt, inspection, and storage of supplies, materials, and
27 equipment, and for printing and services needed by state agencies.
28 The department shall provide standard specifications and standards
29 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
28 procurement contracts.

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

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

27 (a) A bid, quote, or proposal submitted in connection with the
28 authority granted under this section, and records created in the
29 preparation for and evaluation of the bid, quote, or proposal until

1 the time of final notification of award of the contract.

2 (b) Records containing a trade secret as defined under section
3 2 of the uniform trade secrets act, 1998 PA 448, MCL 445.1902, or
4 financial or proprietary information submitted in connection with
5 the authority granted under this section.

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

19 (15) As used in this section:

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

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

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

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

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

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

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

6 (i) An individual, corporation, company, limited liability
7 company, business association, partnership, society, trust, or any
8 other nongovernmental entity, organization, or group.

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

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

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

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

19 (g) "Strategic partner" means a strategic partner described in
20 22 USC 8601 to 8606.

21 (h) "Veteran" means an individual who meets both of the
22 following:

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

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

27 (i) **"Veteran-owned small business" means a veteran-owned small**
28 **business that has received a verification from the United States**
29 **Department of Veterans Affairs Center for Verification and**

- 1 Evaluation or a veteran-owned small business that is otherwise
- 2 qualified as determined by the department.