

**SUBSTITUTE FOR
HOUSE BILL NO. 5053**

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.

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.

28 (e) Procurement of goods or services is in response to a
29 declared state of energy emergency under 1982 PA 191, MCL 10.81 to



1 10.89.

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

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

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

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

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

25 (8) In awarding a contract under this section, the department
26 shall give a preference of up to 10% of the amount of the contract
27 to a qualified disabled veteran. If the qualified disabled veteran
28 otherwise meets the requirements of the contract solicitation and
29 with the preference is the lowest bidder, the department shall



1 enter into a procurement contract with the qualified disabled
2 veteran under this act. If 2 or more qualified disabled veterans
3 are the lowest bidders on a contract, all other things being equal,
4 the qualified disabled veteran with the lowest bid shall be awarded
5 the contract under this act.

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

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

17 (b) The number of qualified disabled veterans who entered into
18 procurement contracts with this state and the total value of those
19 procurement contracts.

20 (c) Whether the department achieved the goal described in this
21 subsection.

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

23 (10) Each year, the department shall review the progress of
24 all state agencies in meeting the 5% goal with input from statewide
25 veterans service organizations and from the business community,
26 including businesses owned by qualified disabled veterans, and
27 shall make recommendations to each house of the legislature
28 regarding continuation, increases, or decreases in the percentage
29 goal. The recommendations shall be based upon the number of



1 businesses that are owned by qualified disabled veterans and on the
 2 continued need to encourage and promote businesses owned by
 3 qualified disabled veterans.

4 (11) To assist the department in reaching the goal described
 5 in subsection (9), the governor shall recommend to the legislature
 6 changes in programs to assist businesses owned by qualified
 7 disabled veterans.

8 (12) Beginning October 1, 2017, the department and all state
 9 agencies may not enter into a contract with a person to acquire or
 10 dispose of supplies, services, or information technology unless the
 11 contract includes a representation that the person is not currently
 12 engaged in, and an agreement that the person will not engage in,
 13 the boycott of a person based in or doing business with a strategic
 14 partner.

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

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

22 (b) Records containing a trade secret as defined under section
 23 2 of the uniform trade secrets act, 1998 PA 448, MCL 445.1902, or
 24 financial or proprietary information submitted in connection with
 25 the authority granted under this section.

26 **(14) Not later than October 1, 2020, the department shall**
 27 **develop policies and procedures that require all procurement**
 28 **contracts entered into by the department or a state agency,**
 29 **including departments that have delegated procurement authority**



1 under this act, to include performance-related liquidated damages
 2 or performance targets with incentives in all procurement
 3 contracts. The department shall also develop policies and
 4 procedures that require the department or state agency to enforce
 5 these provisions. Departments or state agencies acting under
 6 delegated authority shall inform the department of relevant
 7 performance issues. Exceptions to the inclusion or enforcement of
 8 performance-related contract provisions may only be granted by the
 9 department as provided in a written or electronic record by the
 10 department.

11 (15) ~~(14)~~—As used in this section:

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

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

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

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

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

22 (c) "Financial or proprietary information" means information
 23 that has not been publicly disseminated or which is unavailable
 24 from other sources, the release of which might cause the submitter
 25 of the information competitive harm.

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

27 (i) An individual, corporation, company, limited liability
 28 company, business association, partnership, society, trust, or any
 29 other nongovernmental entity, organization, or group.



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

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

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

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

11 (g) "Strategic partner" means a strategic partner described in
12 22 USC 8601 to 8606.

13 (h) "Veteran" means an individual who meets both of the
14 following:

15 (i) Is a veteran as defined in section 1 of 1965 PA 190, MCL
16 35.61.

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

19 Enacting section 1. This amendatory act takes effect 90 days
20 after the date it is enacted into law.

