

SENATE BILL No. 475

April 28, 2009, Introduced by Senators PAPPAGEORGE, KUIPERS, CROPSEY and KAHN and referred to the Committee on Judiciary.

A bill to amend 1984 PA 431, entitled
"The management and budget act,"
by amending section 261 (MCL 18.1261), as amended by 2008 PA 133.

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. In all
6 purchases made by the department, all other things being equal,
7 preference shall be given to products manufactured or services
8 offered by Michigan-based firms, if consistent with federal
9 statutes. The department shall solicit competitive bids from the
10 private sector whenever practicable to efficiently and effectively

1 meet the state's needs. The department shall first determine that
2 competitive solicitation of bids in the private sector is not
3 appropriate before it shall use any other procurement method for an
4 acquisition.

5 (2) The department shall make all discretionary decisions
6 concerning the solicitation, award, amendment, cancellation, and
7 appeal of state contracts.

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

11 (a) Procurement of goods or services is necessary for the
12 imminent protection of public health or safety or to mitigate an
13 imminent threat to public health or safety, as determined by the
14 director or his or her designated representative.

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

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

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

23 (e) Procurement of goods or services is in response to a
24 declared state of energy emergency under 1982 PA 191, MCL 10.81 to
25 10.89.

26 (f) Procurement of goods or services is within a state
27 agency's purchasing authority delegated under subsection (4), and

1 the state agency has established policies or procedures approved by
2 the department to ensure that goods or services are purchased by
3 the state agency at fair and reasonable prices.

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

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

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

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

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

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

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

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

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

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

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

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

1 goal. The recommendations shall be based upon the number of
2 businesses that are owned by qualified disabled veterans and on the
3 continued need to encourage and promote businesses owned by
4 qualified disabled veterans.

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

9 (12) THE DEPARTMENT SHALL ISSUE DIRECTIVES TO ENSURE THAT,
10 BEFORE THE DEPARTMENT OR ANY OTHER STATE AGENCY ENTERS INTO A
11 PROCUREMENT CONTRACT WITH A VENDOR, THE POTENTIAL VENDOR NOTIFIES
12 THE DEPARTMENT OF ITS RELATIONSHIPS WITH ANY OTHER VENDORS THAT
13 HAVE ENTERED INTO A PROCUREMENT CONTRACT WITH THIS STATE.

14 (13) THE DEPARTMENT SHALL ISSUE DIRECTIVES TO ENSURE THAT,
15 WHEN THE DEPARTMENT OR ANY OTHER STATE AGENCY ENTERS INTO A
16 PROCUREMENT CONTRACT WITH A VENDOR, THE VENDOR DOES NOT HAVE 1 OR
17 MORE OF THE FOLLOWING IMMEDIATELY PRECEDING THE ENTERING INTO A
18 PROCUREMENT CONTRACT OR DURING THE TERM OF THE PROCUREMENT
19 CONTRACT:

20 (A) A CONFLICT OF INTEREST BETWEEN THE VENDORS.

21 (B) A CONFLICT OF INTEREST WITH THIS STATE.

22 (C) A SITUATION WHERE THIS STATE CAN BE OVERBILLED DUE TO THE
23 CLOSE RELATIONSHIP OF THE VENDORS.

24 (14) THE DEPARTMENT SHALL ISSUE DIRECTIVES TO ENSURE THAT
25 PROCUREMENT CONTRACTS HAVE A PENALTY CLAUSE THAT PROVIDES THAT A
26 VENDOR WHO IS FOUND TO HAVE FAILED TO PROVIDE NOTICE AS REQUIRED
27 UNDER SUBSECTION (12) OR TO HAVE A CONFLICT OF INTEREST PROHIBITED

1 UNDER SUBSECTION (13) MAY LOSE THE CONTRACT AS DETERMINED BY THE
2 DEPARTMENT AND MAY BE DEBARRED FROM PARTICIPATING IN FUTURE
3 PROCUREMENT CONTRACTS AS DETERMINED BY THE DEPARTMENT.

4 (15) ~~(12)~~—As used in this section:

5 (a) "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 (b) "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 (c) "Veteran" means a person who served in the army, air
12 force, navy, marine corps, or coast guard and who was discharged or
13 released from his or her service with an honorable or general
14 discharge.