

HOUSE BILL No. 6237

June 12, 2018, Introduced by Reps. Chirkun, Lasinski, Gay-Dagnogo, Chang, Yancey, LaGrand, Greimel, Ellison, Cochran, Green, Geiss, Pagan, Wittenberg, Moss, Zemke, Hertel, Elder, Singh, Durhal and Jones and referred to the Committee on Commerce and Trade.

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~~, **LAW**, in all purchases made by the
7 department, all other things being equal, preference shall be given
8 to products manufactured or services offered by Michigan-based
9 firms or by facilities with respect to which the operator **OF THAT**
10 **FACILITY** is designated as a clean corporate citizen under part 14

1 of the natural resources and environmental protection act, 1994 PA
2 451, MCL 324.1401 to 324.1429, or to biobased products whose
3 content is sourced in this state. The department shall solicit
4 competitive bids from the private sector whenever practicable to
5 efficiently and effectively meet the state's needs. The department
6 shall first determine that competitive solicitation of bids in the
7 private sector is not appropriate before using any other
8 procurement method for an acquisition.

9 (2) The department shall make all discretionary decisions
10 concerning the solicitation, award, amendment, cancellation, and
11 appeal of state contracts.

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

15 (a) Procurement of goods or services is necessary for the
16 imminent protection of public health or safety or to mitigate an
17 imminent threat to public health or safety, as determined by the
18 director or his or her designated representative.

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

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

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

27 (e) Procurement of goods or services is in response to a

1 declared state of energy emergency under 1982 PA 191, MCL 10.81 to
2 10.89.

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

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

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

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

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

26 (8) In awarding a contract under this section, the department
27 shall give a preference of up to 10% of the amount of the contract

1 to a qualified disabled veteran. If the qualified disabled veteran
2 otherwise meets the requirements of the contract solicitation and
3 with the preference is the lowest bidder, the department shall
4 enter into a procurement contract with the qualified disabled
5 veteran under this act. If 2 or more qualified disabled veterans
6 are the lowest bidders on a contract, all other things being equal,
7 the qualified disabled veteran with the lowest bid shall be awarded
8 the contract under this act.

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

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

20 (b) The number of qualified disabled veterans who entered into
21 procurement contracts with this state and the total value of those
22 procurement contracts.

23 (c) Whether the department achieved the goal described in this
24 subsection.

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

26 (10) Each year, the department shall review the progress of
27 all state agencies in meeting the 5% goal with input from statewide

1 veterans service organizations and from the business community,
2 including businesses owned by qualified disabled veterans, and
3 shall make recommendations to each house of the legislature
4 regarding continuation, increases, or decreases in the percentage
5 goal. The recommendations shall be based upon the number of
6 businesses that are owned by qualified disabled veterans and on the
7 continued need to encourage and promote businesses owned by
8 qualified disabled veterans.

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

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

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

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

27 (b) Records containing a trade secret as defined under section

2 of the uniform trade secrets act, 1998 PA 448, MCL 445.1902, or financial or proprietary information submitted in connection with the authority granted under this section.

(14) IN AWARDING A CONTRACT UNDER THIS SECTION, THE DEPARTMENT SHALL GIVE A PREFERENCE OF UP TO 10% OF THE AMOUNT OF THE CONTRACT TO A SMALL BUSINESS. IF THE SMALL BUSINESS OTHERWISE MEETS THE REQUIREMENTS OF THE CONTRACT SOLICITATION AND WITH THE PREFERENCE IS THE LOWEST BIDDER, THE DEPARTMENT SHALL ENTER INTO A PROCUREMENT CONTRACT WITH THE SMALL BUSINESS UNDER THIS ACT. IF 2 OR MORE SMALL BUSINESSES ARE THE LOWEST BIDDERS ON A CONTRACT, ALL OTHER THINGS BEING EQUAL, THE SMALL BUSINESS WITH THE LOWEST BID SHALL BE AWARDED THE CONTRACT UNDER THIS ACT.

(15) IT IS THE GOAL OF THE DEPARTMENT TO AWARD EACH YEAR NOT LESS THAN 5% OF ITS TOTAL EXPENDITURES FOR CONSTRUCTION, GOODS, AND SERVICES TO SMALL BUSINESSES. THE DEPARTMENT MAY COUNT TOWARD ITS 5% YEARLY GOAL DESCRIBED IN THIS SUBSECTION THAT PORTION OF ALL PROCUREMENT CONTRACTS IN WHICH THE BUSINESS ENTITY THAT RECEIVED THE PROCUREMENT CONTRACT SUBCONTRACTS WITH A SMALL BUSINESS. EACH YEAR, THE DEPARTMENT SHALL REPORT TO EACH HOUSE OF THE LEGISLATURE ON ALL OF THE FOLLOWING FOR THE IMMEDIATELY PRECEDING 12-MONTH PERIOD:

(A) THE NUMBER OF SMALL BUSINESSES WHO SUBMITTED A BID FOR A STATE PROCUREMENT CONTRACT.

(B) THE NUMBER OF SMALL BUSINESSES WHO ENTERED INTO PROCUREMENT CONTRACTS WITH THIS STATE AND THE TOTAL VALUE OF THOSE PROCUREMENT CONTRACTS.

(C) WHETHER THE DEPARTMENT ACHIEVED THE GOAL DESCRIBED IN THIS

1 SUBSECTION.

2 (D) THE RECOMMENDATIONS DESCRIBED IN SUBSECTION (16) .

3 (16) EACH YEAR, THE DEPARTMENT SHALL REVIEW THE PROGRESS OF
4 ALL STATE AGENCIES IN MEETING THE 5% GOAL WITH INPUT FROM THE
5 BUSINESS COMMUNITY, INCLUDING SMALL BUSINESSES, AND SHALL MAKE
6 RECOMMENDATIONS TO EACH HOUSE OF THE LEGISLATURE REGARDING
7 CONTINUATION, INCREASES, OR DECREASES IN THE PERCENTAGE GOAL.

8 (17) TO ASSIST THE DEPARTMENT IN REACHING THE GOAL DESCRIBED
9 IN SUBSECTION (16) , THE GOVERNOR SHALL RECOMMEND TO THE LEGISLATURE
10 CHANGES IN PROGRAMS TO ASSIST SMALL BUSINESSES.

11 (18) ~~(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
18 reasons.

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

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

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

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

1 (i) An individual, corporation, company, limited liability
2 company, business association, partnership, society, trust, or any
3 other nongovernmental entity, organization, or group.

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

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

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

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

14 **(G) "SMALL BUSINESS" MEANS A BUSINESS CONCERN INCORPORATED OR**
15 **DOING BUSINESS IN THIS STATE THAT EMPLOYS FEWER THAN 250 FULL-TIME**
16 **EMPLOYEES AND THAT HAS GROSS ANNUAL SALES OF LESS THAN**
17 **\$12,500,000.00.**

18 **(H)** ~~(g)~~—"Strategic partner" means a strategic partner
19 described in 22 USC 8601 to 8606.

20 **(I)** ~~(h)~~—"Veteran" means an individual who meets both of the
21 following:

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

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