

# SENATE BILL NO. 489

September 04, 2019, Introduced by Senators IRWIN, GEISS, MOSS, CHANG, MCMORROW, ALEXANDER and HOLLIER and referred to the Committee on Government Operations.

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,  
and by adding section 241d.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 241d. (1) Beginning on the effective date of the  
2       amendatory act that added this section, the department and all  
3       state agencies may not enter into a contract with a person for the

1 construction, alteration, or repair of a state building, facility,  
2 or other state property unless the contract includes a  
3 representation that the person does not currently own, operate, or  
4 manage, and an agreement that the person will not own, operate, or  
5 manage during the term of the contract, a private detention  
6 facility.

7 (2) As used in this section, "private detention facility"  
8 means that term as defined in section 261.

9 Sec. 261. (1) The department shall provide for the purchase  
10 of, the contracting for, and the providing of supplies, materials,  
11 services, insurance, utilities, third party financing, equipment,  
12 printing, and all other items as needed by state agencies for which  
13 the legislature has not otherwise expressly provided. If consistent  
14 with federal statutes, in all purchases made by the department, all  
15 other things being equal, preference shall be given to products  
16 manufactured or services offered by Michigan-based firms or by  
17 facilities with respect to which the operator is designated as a  
18 clean corporate citizen under part 14 of the natural resources and  
19 environmental protection act, 1994 PA 451, MCL 324.1401 to  
20 324.1429, or to biobased products whose content is sourced in this  
21 state. The department shall solicit competitive bids from the  
22 private sector whenever practicable to efficiently and effectively  
23 meet the state's needs. The department shall first determine that  
24 competitive solicitation of bids in the private sector is not  
25 appropriate before using any other procurement method for an  
26 acquisition.

27 (2) The department shall make all discretionary decisions  
28 concerning the solicitation, award, amendment, cancellation, and  
29 appeal of state contracts.

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

4           (a) Procurement of goods or services is necessary for the  
5 imminent protection of public health or safety or to mitigate an  
6 imminent threat to public health or safety, as determined by the  
7 director or his or her designated representative.

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

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

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

16           (e) Procurement of goods or services is in response to a  
17 declared state of energy emergency under 1982 PA 191, MCL 10.81 to  
18 10.89.

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

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

29           (5) The department may enter into lease purchases or

1 installment purchases for periods not exceeding the anticipated  
2 useful life of the items purchased unless otherwise prohibited by  
3 law.

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

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

13 (8) 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 qualified disabled veteran. If the qualified disabled veteran  
16 otherwise meets the requirements of the contract solicitation and  
17 with the preference is the lowest bidder, the department shall  
18 enter into a procurement contract with the qualified disabled  
19 veteran under this act. If 2 or more qualified disabled veterans  
20 are the lowest bidders on a contract, all other things being equal,  
21 the qualified disabled veteran with the lowest bid shall be awarded  
22 the contract under this act.

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

1 house of the legislature on all of the following for the  
2 immediately preceding 12-month period:

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

5 (b) The number of qualified disabled veterans who entered into  
6 procurement contracts with this state and the total value of those  
7 procurement contracts.

8 (c) Whether the department achieved the goal described in this  
9 subsection.

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

11 (10) Each year, the department shall review the progress of  
12 all state agencies in meeting the 5% goal with input from statewide  
13 veterans service organizations and from the business community,  
14 including businesses owned by qualified disabled veterans, and  
15 shall make recommendations to each house of the legislature  
16 regarding continuation, increases, or decreases in the percentage  
17 goal. The recommendations ~~shall~~**must** be based ~~upon~~**on** the number of  
18 businesses that are owned by qualified disabled veterans and on the  
19 continued need to encourage and promote businesses owned by  
20 qualified disabled veterans.

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

25 (12) Beginning October 1, 2017, the department and all state  
26 agencies may not enter into a contract with a person to acquire or  
27 dispose of supplies, services, or information technology unless the  
28 contract includes a representation that the person is not currently  
29 engaged in, and an agreement that the person will not engage in,

1 the boycott of a person based in or doing business with a strategic  
2 partner.

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

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

10 (b) Records containing a trade secret as defined under section  
11 2 of the uniform trade secrets act, 1998 PA 448, MCL 445.1902, or  
12 financial or proprietary information submitted in connection with  
13 the authority granted under this section.

14 **(14) Beginning on the effective date of the amendatory act**  
15 **that added this subsection, the department and all state agencies**  
16 **may not enter into a contract with a person to acquire or dispose**  
17 **of supplies, services, or information technology unless the**  
18 **contract includes a representation that the person does not**  
19 **currently own, operate, or manage, and an agreement that the person**  
20 **will not own, operate, or manage during the term of the contract, a**  
21 **private detention facility.**

22 **(15) ~~(14)~~As used in this section:**

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

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

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

29 (ii) A boycott against a public entity of a foreign state when

1 the boycott is applied in a nondiscriminatory manner.

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

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

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

9 (i) An individual, corporation, company, limited liability  
10 company, business association, partnership, society, trust, or any  
11 other nongovernmental entity, organization, or group.

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

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

16 **(e) "Private detention facility" means any building, facility,**  
17 **or structure used to detain individuals, not including state work**  
18 **release centers or juvenile or adult residential treatment**  
19 **facilities.**

20 **(f)** ~~(e)~~—"Qualified disabled veteran" means a business entity  
21 that is 51% or more owned by 1 or more veterans with a service-  
22 connected disability.

23 **(g)** ~~(f)~~—"Service-connected disability" means a disability  
24 incurred or aggravated in the line of duty in the active military,  
25 naval, or air service as described in 38 USC 101(16).

26 **(h)** ~~(g)~~—"Strategic partner" means a strategic partner  
27 described in 22 USC 8601 to 8606.

28 **(i)** ~~(h)~~—"Veteran" means an individual who meets both of the  
29 following:

1           (i) Is a veteran as defined in section 1 of 1965 PA 190, MCL  
2 35.61.

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