

HOUSE BILL NO. 4902

May 25, 2021, Introduced by Reps. Filler, Peterson, Cherry and Sneller 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 2020 PA 174.

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

1 the legislature has not otherwise expressly provided. If consistent
2 with federal statutes, in all purchases made by the department, all
3 other things being equal, preference shall be given to products
4 manufactured or services offered by Michigan-based firms or by
5 facilities with respect to which the operator is designated as a
6 clean corporate citizen under part 14 of the natural resources and
7 environmental protection act, 1994 PA 451, MCL 324.1401 to
8 324.1429, or to biobased products whose content is sourced in this
9 state. The department shall solicit competitive bids from the
10 private sector whenever practicable to efficiently and effectively
11 meet the state's needs. The department shall first determine that
12 competitive solicitation of bids in the private sector is not
13 appropriate before using any other procurement method for an
14 acquisition.

15 (2) The department shall make all discretionary decisions
16 concerning the solicitation, award, amendment, cancellation, and
17 appeal of state contracts.

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

21 (a) Procurement of goods or services is necessary for the
22 imminent protection of public health or safety or to mitigate an
23 imminent threat to public health or safety, as determined by the
24 director or his or her designated representative.

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

28 (c) Procurement of goods or services is in response to a
29 declared state of emergency or state of disaster under the

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

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

4 (e) Procurement of goods or services is in response to a
5 declared state of energy emergency under 1982 PA 191, MCL 10.81 to
6 10.89.

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

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

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

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

1 The department shall provide standard specifications and standards
2 of performance applicable to purchases.

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

7 (8) In awarding a contract under this section, the department
8 shall give a preference of up to 10% of the amount of the contract
9 to a qualified disabled veteran. If the qualified disabled veteran
10 otherwise meets the requirements of the contract solicitation and
11 with the preference is the lowest bidder, the department shall
12 enter into a procurement contract with the qualified disabled
13 veteran under this act. If 2 or more qualified disabled veterans
14 are the lowest bidders on a contract, all other things being equal,
15 the qualified disabled veteran with the lowest bid shall be awarded
16 the contract under this act.

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

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

28 (b) The number of qualified disabled veterans who entered into
29 procurement contracts with this state and the total value of those

1 procurement contracts.

2 (c) Whether the department achieved the goal described in this
3 subsection.

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

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

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

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

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

29 (a) A bid, quote, or proposal submitted in connection with the

1 authority granted under this section, and records created in the
2 preparation for and evaluation of the bid, quote, or proposal until
3 the time of final notification of award of the contract.

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

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

21 (15) **Beginning October 1, 2021, if the lowest responsive and**
22 **responsible best value bidder on a contract in whole or in**
23 **awardable part described in this section is not a Michigan**
24 **business, then all bidders on that contract that are Michigan**
25 **businesses shall have 7 days to resubmit their bids in whole or**
26 **awardable part to match or beat the bid from the bidder who is not**
27 **a Michigan business. If only 1 Michigan business that bid on the**
28 **contract resubmits a bid under this subsection that matches or**
29 **beats the successful bid from the bidder who is not a Michigan**

1 business, the department shall enter into the contract with that
 2 Michigan business. If 2 or more Michigan businesses that bid on the
 3 contract resubmit a bid under this subsection that matches or beats
 4 the successful bid from the bidder who is not a Michigan business,
 5 the department shall enter into the contract with the Michigan
 6 business that submitted the lowest responsive and responsible best
 7 value bid as determined by the department. The department shall
 8 make all discretionary determinations to implement this subsection.
 9 The department shall issue directives to all state agencies to
 10 implement this subsection. As used in this subsection:

11 (a) "Michigan business" means a business that meets both of
 12 the following:

13 (i) Is a Michigan business as that term is described in section
 14 268.

15 (ii) Meets all of the following:

16 (A) Is a business that has its principal place of business
 17 located in this state.

18 (B) Is a business that has the majority of its employee
 19 payroll paid to employees who are residents of this state.

20 (C) Is a business in which a majority of its employees are
 21 residents of this state.

22 (D) If the contract is for goods, those goods were
 23 manufactured, mined, or harvested entirely in this state.

24 (b) "Responsive and responsible best value bidder" means that
 25 term as defined in section 241.

26 (16) ~~(15)~~—As used in this section:

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

29 (b) "Boycott" means refusal to have dealings with, divest

1 from, or otherwise engage with a person. Boycott does not include 1
2 or more of the following:

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

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

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

8 (c) "Financial or proprietary information" means information
9 that has not been publicly disseminated or which is unavailable
10 from other sources, the release of which might cause the submitter
11 of the information competitive harm.

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

13 (i) An individual, corporation, company, limited liability
14 company, business association, partnership, society, trust, or any
15 other nongovernmental entity, organization, or group.

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

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

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

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

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

28 (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.