

THE MANAGEMENT AND BUDGET ACT (EXCERPT)
Act 431 of 1984

18.1268 Bidder for state contract as Michigan business; certification; significant business presence required; verification; disclosure; reciprocal preference; list of states giving preference to in-state bidders; waiver of entitlement to claim preference; fraud; felony; penalty; review; recommendations; applicability.

Sec. 268. (1) A bidder for a state contract is a Michigan business for the purposes of this section if it certifies that it has done any of the following during the 12 months immediately preceding the bid deadline or for the period the business has been in existence, if the business is newly established within the 12 months immediately preceding the bid deadline:

(a) Filed a Michigan single business tax return or Michigan business tax return showing a portion or all of the income tax base allocated or apportioned to the state of Michigan pursuant to the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601.

(b) Filed a Michigan income tax return showing income generated in or attributed to the state of Michigan.

(c) Withheld Michigan income tax from compensation paid to the bidder's owners and remitted the tax to the department of treasury.

(2) The filing or withholding shall be more than a nominal filing for the purpose of gaining the status of a Michigan business, but shall indicate a significant business presence in the state, considering the size of the business and the nature of its activities.

(3) A bidder certifying that it meets the criteria for a Michigan business listed in subsections (1) and (2) shall authorize the department of treasury to verify that the bidder has or has not met 1 of the 3 criteria in subsection (1). This authorization shall permit the department of treasury to disclose the verifying information to the procuring agency in accordance with the procedures established by section 28 of 1941 PA 122, MCL 205.28.

(4) Only a bidder that has certified that it is a Michigan business is entitled to have the department apply a reciprocal preference in its favor against a business that submits a bid from a state which applies a preference law against out-of-state bidders. A bidder that does not certify that it is a Michigan business shall indicate in its bid the state in which it maintains its principal place of business for the purpose of applying that state's preference law against the bidder.

(5) If the low bid for a state procurement exceeds \$100,000.00 and is from a business located in a state which applies a preference law against out-of-state businesses, the department shall prefer a bid from a Michigan business in the same manner in which the out-of-state bidder would be preferred in its home state.

(6) The department shall compile a list of states that give preference to in-state bidders and the extent of the preference and shall update the list at least annually. An agency may rely on this compilation in implementing the provisions of this act without incurring liability to any bidder.

(7) A bidder waives any entitlement to claim a preference under this act if the bidder has not certified in its bid that the bidder is a Michigan business and has not authorized the department of treasury to release information necessary to verify the entitlement.

(8) A bidder shall not fraudulently certify that it is a Michigan business under this act or falsely indicate the state in which it has its principal place of business for the purpose of avoiding application of the reciprocal preference.

(9) A business that purposefully or willfully submits a false certification that it is a Michigan business or falsely indicates the state in which it has its principal place of business is guilty of a felony, punishable by a fine of not less than \$25,000.00.

(10) Two years after October 1, 1988, the department shall review the costs and consequences of implementing this section. The department shall solicit input from the business community and from state agencies receiving procurements affected by the provisions of this section, and shall make recommendations to the legislature regarding continuation or modification of this section.

(11) This section shall not apply to any procurement if the provisions of this section would conflict with federal statute.

History: Add. 1988, Act 237, Eff. Oct. 1, 1988;—Am. 2007, Act 183, Imd. Eff. Dec. 21, 2007.

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