

SENATE BILL NO. 410

August 20, 2019, Introduced by Senator GEISS and referred to the Committee on Economic and Small Business Development.

A bill to amend 1984 PA 431, entitled "The management and budget act," by amending sections 241 and 261 (MCL 18.1241 and 18.1261), section 241 as amended by 2012 PA 430 and section 261 as amended by 2017 PA 21.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 241. (1) Except for the contracts permitted in section
2 240, a contract shall not be awarded for the construction, repair,

1 remodeling, or demolition of a facility unless the contract is let
2 pursuant to a bidding procedure that is approved by the board. The
3 department shall issue directives prescribing procedures to be used
4 to implement this section. The procedures shall require a
5 competitive solicitation in the award of any contract for
6 construction, repair, remodeling, or demolition of a facility.

7 (2) The department may award or approve the award, if the
8 board approves, of construction contracts to construct a project
9 for which the director is the agent and may expend, for the
10 purposes and in the manner set forth, the amounts appropriated. The
11 director is not the agent for a community college or institution of
12 higher education, but may act in that capacity upon the specific
13 request of a community college or institution of higher education.

14 (3) In awarding a contract under this section, the department
15 shall give a preference of up to 10% of the amount of the contract
16 to a qualified disabled veteran, as defined in section 261. If the
17 qualified disabled veteran otherwise meets the requirements of the
18 contract solicitation and with the preference is the lowest bidder,
19 the department shall enter into a construction contract with the
20 qualified disabled veteran under this act. If 2 or more qualified
21 disabled veterans are the lowest bidders on a contract, all other
22 things being equal, the qualified disabled veteran with the lowest
23 bid shall be awarded the contract under this act.

24 (4) Subject to ~~subsection~~**subsections (3) and (5)**, for
25 projects funded in whole or part with state funds, the construction
26 contract award shall be made to the responsive and responsible best
27 value bidder. As used in this subsection, "responsive and
28 responsible best value bidder" means a bidder who meets all the
29 following:

1 (a) A bidder who complies with all bid specifications and
2 requirements.

3 (b) A bidder who has been determined by the department to be
4 responsible by the following criteria:

5 (i) The bidder's financial resources.

6 (ii) The bidder's technical capabilities.

7 (iii) The bidder's professional experience.

8 (iv) The bidder's past performance.

9 (v) The bidder's insurance and bonding capacity.

10 (vi) The bidder's business integrity.

11 (c) A bidder who has been selected by the department through a
12 selection process that evaluates the bid on both price and
13 qualitative components to determine what is the best value for this
14 state. Qualitative components may include, but are not limited to,
15 all of the following:

16 (i) Technical design.

17 (ii) Technical approach.

18 (iii) Quality of proposed personnel.

19 (iv) Management plans.

20 **(5) In awarding a contract under this section, if consistent**
21 **with federal statutes and all other things being equal, the**
22 **department and all state agencies in which the department has**
23 **delegated procurement authority under this act, shall give**
24 **preference to a geographically disadvantaged business enterprise in**
25 **the same manner as provided in section 261. A "geographically**
26 **disadvantaged business enterprise" means that term as defined in**
27 **section 261.**

28 Sec. 261. (1) The department shall provide for the purchase

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

19 (2) The department shall make all discretionary decisions
20 concerning the solicitation, award, amendment, cancellation, and
21 appeal of state contracts.

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

25 (a) Procurement of goods or services is necessary for the
26 imminent protection of public health or safety or to mitigate an
27 imminent threat to public health or safety, as determined by the
28 director or his or her designated representative.

29 (b) Procurement of goods or services is for emergency repair

1 or construction caused by unforeseen circumstances when the repair
2 or construction is necessary to protect life or property.

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

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

8 (e) Procurement of goods or services is in response to a
9 declared state of energy emergency under 1982 PA 191, MCL 10.81 to
10 10.89.

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

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

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

25 (6) The department shall issue directives for the procurement,
26 receipt, inspection, and storage of supplies, materials, and
27 equipment, and for printing and services needed by state agencies.
28 The department shall provide standard specifications and standards
29 of performance applicable to purchases.

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

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

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

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

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

29 (c) Whether the department achieved the goal described in this

1 subsection.

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

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

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

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

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

27 (a) A bid, quote, or proposal submitted in connection with the
28 authority granted under this section, and records created in the
29 preparation for and evaluation of the bid, quote, or proposal until

1 the time of final notification of award of the contract.

2 (b) Records containing a trade secret as defined under section
3 2 of the uniform trade secrets act, 1998 PA 448, MCL 445.1902, or
4 financial or proprietary information submitted in connection with
5 the authority granted under this section.

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

16 (a) The number of geographically disadvantaged business
17 enterprises who submitted a bid for a state procurement contract.

18 (b) The number of geographically disadvantaged business
19 enterprises who entered into procurement contracts with this state,
20 a description of the contracted goods or services, and the total
21 value of those procurement contracts.

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

24 (d) The recommendations described in subsection (15).

25 (15) Each year, the department shall review the progress of
26 all state agencies in meeting the 5% goal with input from
27 geographically disadvantaged business enterprises and from the
28 business community, and shall make recommendations to each house of
29 the legislature regarding continuation, increases, or decreases in

1 the percentage goal.

2 (16) To assist the department in reaching the goal described
3 in subsection (15), the governor shall recommend to the legislature
4 changes in programs to assist geographically disadvantaged business
5 enterprises.

6 (17) ~~(14)~~—As used in this section:

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

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

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

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

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

17 (c) "Financial or proprietary information" means information
18 that has not been publicly disseminated or which is unavailable
19 from other sources, the release of which might cause the submitter
20 of the information competitive harm.

21 (d) "Geographically disadvantaged business enterprise" means a
22 person or entity that satisfies 1 or more of the following:

23 (i) Is certified as a HUBZone small business concern by the
24 United States Small Business Administration.

25 (ii) Has a principal place of business located within a
26 qualified opportunity zone within this state.

27 (iii) More than half of its employees have a principal residence
28 located within a qualified opportunity zone within this state.

29 (e) "HUBZone small business concern" means that term as

1 **defined under 13 CFR 126.103.**

2 (f) ~~(d)~~—"Person" means any of the following:

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

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

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

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

13 (h) **"Qualified opportunity zone" means that term as defined in**
14 **26 USC 1400Z-1.**

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

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

20 (k) ~~(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.