

HOUSE BILL NO. 5537

March 05, 2024, Introduced by Reps. Smit, Beeler, Rigas, Fox, Bierlein, Bezotte, BeGole, Alexander, Thompson, Kunse, Harris, Wozniak, Borton, Markkanen, Johnsen, DeBoyer, Cavitt and Posthumus and referred to the Committee on Government Operations.

A bill to amend 1984 PA 431, entitled "The management and budget act," by amending sections 115, 241, 261, 305, and 404 (MCL 18.1115, 18.1241, 18.1261, 18.1305, and 18.1404), section 115 as amended by 2018 PA 389, section 241 as amended by 2012 PA 430, section 261 as amended by 2020 PA 174, and sections 305 and 404 as amended by 1999 PA 8.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 115. ~~(1) "Institution of higher education" or~~

1 ~~"university" means a state supported 4-year college or university.~~

2 (1) ~~(2)~~ "Information technology services" means services
3 involving all aspects of managing and processing information,
4 including, but not limited to, all of the following:

5 (a) Application development and maintenance.

6 (b) Desktop computer support and management.

7 (c) Mainframe computer support and management.

8 (d) Server support and management.

9 (e) Local area network support and management, including, but
10 not limited to, wireless networking.

11 (f) Information technology project management.

12 (g) Information technology planning and budget management.

13 (h) Telecommunication services, security, infrastructure, and
14 support.

15 (2) **"Institution of higher education" or "university" means a**
16 **state supported 4-year college or university.**

17 (3) "JCOS" means the joint capital outlay subcommittee of the
18 appropriations committees.

19 (4) **"Merit" means a reasonable expectation, based on objective**
20 **criteria such as experience, education, and training, that a**
21 **prospective employee can adequately perform the duties of the job.**

22 (5) ~~(4)~~ Except as used in sections 284 to 292, "record" means
23 a public record, as **that term is** defined in section 2 of the
24 freedom of information act, 1976 PA 442, MCL 15.232.

25 (6) ~~(5)~~ "State agency" means a department, board, commission,
26 office, agency, authority, or other unit of state government. State
27 agency does not include an institution of higher education or a
28 community college or, for purposes of article 2 or 3, the
29 legislative branch of government. For purposes of article 2 or 3,

1 except for those sections pertaining to the authorization,
 2 planning, construction, and funding of a capital outlay project,
 3 including construction of a facility to house offices or functions
 4 necessary for operation of the judicial branch of government, state
 5 agency does not include the judicial branch of government.

6 (7) ~~(6)~~ "Unit of local government" means a political
 7 subdivision of this state, including school districts, community
 8 college districts, intermediate school districts, cities, villages,
 9 townships, counties, and authorities, if the political subdivision
 10 has as its primary purpose the providing of local governmental
 11 service for citizens in a geographically limited area of the state
 12 and has the power to act primarily on behalf of that area.

13 Sec. 241. (1) Except for the contracts permitted in section
 14 240, a contract ~~shall~~**must** not be awarded for the construction,
 15 repair, remodeling, or demolition of a facility unless the contract
 16 is let ~~pursuant to~~**in accordance with** a bidding procedure that is
 17 approved by the board. The department shall issue directives
 18 prescribing procedures to be used to implement this section. The
 19 procedures ~~shall~~**must** require a competitive solicitation in the
 20 award of any contract for construction, repair, remodeling, or
 21 demolition of a facility.

22 (2) The department may award or approve the award, if the
 23 board approves, of construction contracts to construct a project
 24 for which the director is the agent and may expend, for the
 25 purposes and in the manner set forth, the amounts appropriated. The
 26 director is not the agent for a community college or institution of
 27 higher education, but may act in that capacity ~~upon~~**on** the specific
 28 request of a community college or institution of higher education.

29 (3) **At the time that a person submits a proposal for the award**

1 of a contract under this section, the person must submit a form
 2 prescribed by the department under which the person attests under
 3 penalty of perjury and subject to a civil fine of \$5,000.00 that
 4 the person uses only hiring practices based on the merit of
 5 prospective employees.

6 (4) ~~(3)~~—In awarding a contract under this section, the
 7 department shall give a preference of up to 10% of the amount of
 8 the contract to a qualified disabled veteran, as **that term is**
 9 defined in section 261. If the qualified disabled veteran otherwise
 10 meets the requirements of the contract solicitation and with the
 11 preference is the lowest bidder, the department ~~shall~~**must** enter
 12 into a construction contract with the qualified disabled veteran
 13 under this act. If 2 or more qualified disabled veterans are the
 14 lowest bidders on a contract, all other things being equal, the
 15 qualified disabled veteran with the lowest bid ~~shall~~**must** be
 16 awarded the contract under this act.

17 (5) **The department shall not award a contract under this**
 18 **section to a person to which either or both of the following apply:**

19 (a) **The person uses hiring practices based on criteria other**
 20 **than the merit of prospective employees.**

21 (b) **The person does not submit the form described in**
 22 **subsection (3).**

23 (6) ~~(4)~~—Subject to subsection ~~(3)~~, **(4)**, and **except as**
 24 **otherwise provided in subsection (5)**, for projects funded in whole
 25 or part with state funds, the construction contract award ~~shall~~
 26 **must** be made to the responsive and responsible best value bidder.
 27 As used in this subsection, "responsive and responsible best value
 28 bidder" means a bidder ~~who~~**that** meets all the following:

29 (a) A bidder ~~who~~**that** complies with all bid specifications and

1 requirements.

2 (b) A bidder ~~who~~**that** has been determined by the department to
3 be responsible by the following criteria:

4 (i) The bidder's financial resources.

5 (ii) The bidder's technical capabilities.

6 (iii) The bidder's professional experience.

7 (iv) The bidder's past performance.

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

9 (vi) The bidder's business integrity.

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

15 (i) Technical design.

16 (ii) Technical approach.

17 (iii) Quality of proposed personnel.

18 (iv) Management plans.

19 Sec. 261. (1) The department shall provide for the purchase
20 of, the contracting for, and the providing of supplies, materials,
21 services, insurance, utilities, ~~third party~~**third-party** financing,
22 equipment, printing, and all other items as needed by state
23 agencies for which the legislature has not otherwise expressly
24 provided. If consistent with federal ~~statutes,~~**law**, in all
25 purchases made by the department, all other things being equal,
26 preference ~~shall~~**must** be given to products manufactured or services
27 offered by Michigan-based firms or by facilities with respect to
28 which the operator is designated as a clean corporate citizen under
29 part 14 of the natural resources and environmental protection act,

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

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

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

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

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 **(d)** ~~(e)~~ Procurement of goods or services is in response to a
28 declared state of energy emergency under 1982 PA 191, MCL 10.81 to
29 10.89.

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

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

17 (5) The department may enter into lease purchases or
18 installment purchases for periods not exceeding the anticipated
19 useful life of the items purchased unless otherwise prohibited by
20 law.

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

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

1 (8) At the time that a person submits a proposal for the award
2 of a contract under this section, the person must submit a form
3 prescribed by the department under which the person attests under
4 penalty of perjury and subject to a civil fine of \$5,000.00 that
5 the person uses only hiring practices based on the merit of
6 prospective employees.

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

17 (10) ~~(9)~~—It is the goal of the department to award each year
18 not less than 5% of its total expenditures for construction, goods,
19 and services to qualified disabled veterans. The department may
20 count toward its 5% yearly goal described in this subsection that
21 portion of all procurement contracts in which the business entity
22 that received the procurement contract subcontracts with a
23 qualified disabled veteran. Each year, the department shall report
24 to each 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~~**that**
27 submitted a bid for a state procurement contract.

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

1 those procurement contracts.

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

4 (d) The recommendations described in subsection ~~(10)~~. **(11)**.

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

15 **(12)** ~~(11)~~—To assist the department in reaching the goal
16 described in subsection ~~(9)~~, **(10)**, the governor shall recommend to
17 the legislature changes in programs to assist businesses owned by
18 qualified disabled veterans.

19 **(13)** ~~(12)~~—Beginning October 1, 2017, the department and all
20 state agencies may not enter into a contract with a person to
21 acquire or dispose of supplies, services, or information technology
22 unless the contract includes a representation that the person is
23 not currently engaged in, and an agreement that the person ~~will~~**may**
24 not engage in, the boycott of a person based in or doing business
25 with a strategic partner.

26 **(14) The department shall not award a contract under this**
27 **section to a person to which either or both of the following apply:**

28 **(a) The person uses hiring practices based on criteria other**
29 **than the merit of prospective employees.**

1 **(b) The person does not submit the form described in**
2 **subsection (8).**

3 **(15)** ~~(13)~~—The following records are exempt from disclosure
4 under the freedom of information act, 1976 PA 442, MCL 15.231 to
5 15.246, 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 **that term is** defined
11 under section 2 of the uniform trade secrets act, 1998 PA 448, MCL
12 445.1902, or financial or proprietary information submitted in
13 connection with the authority granted under this section.

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

27 **(17)** ~~(15)~~—As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

27 (g) "Strategic partner" means a strategic partner described in
28 22 USC 8601 to ~~8606~~**8607**.

29 (h) "Veteran" means an individual who meets both of the

1 following:

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

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

6 Sec. 305. (1) "Total state spending" means the sum of state
7 operating fund expenditures, not including transfers between funds.

8 (2) "Total state spending from state sources" means the sum of
9 state operating fund expenditures not including transfers between
10 funds, federal aid, and restricted local and private sources of
11 financing.

12 (3) "Transfer payments" means as defined by the ~~bureau~~ **Bureau**
13 of ~~economic analysis~~ **Economic Analysis** of the United States
14 department ~~Department~~ of ~~commerce~~ **Commerce** or its successor.

15 ~~(4) "Unit of local government" means unit of local government~~
16 ~~as defined in section 115(5).~~

17 Sec. 404. (1) "Revenues" means the increases in the net
18 current assets of a fund other than from expenditure refunds and
19 residual equity transfers.

20 (2) "Revolving fund" means a self-supporting fund ~~which~~ **that**
21 provides services or sells goods to state agencies, other
22 governmental jurisdictions, or the public.

23 (3) "Unencumbered balance" means that portion of an
24 appropriation not yet expended and encumbered.

25 (4) "Unexpended balance" means that portion of an
26 appropriation not yet expended.

27 ~~(5) "Unit of local government" means unit of local government~~
28 ~~as defined by section 115(5).~~

29 (5) ~~(6)~~ "Work project" means a 1-time nonrecurring undertaking

- 1 for the purpose of accomplishing an objective contained in specific
- 2 line-item appropriation for that purpose or any other specific
- 3 line-item appropriation designated as a work project by law under
- 4 criteria established under section 451a(1).