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

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

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

(2) The department shall make all discretionary decisions concerning the solicitation, award, amendment, cancellation, and appeal of state contracts.
(3) The department shall utilize competitive solicitation for all purchases authorized under this act unless 1 or more of the following apply:

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

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

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

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

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

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

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

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

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

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

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

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

(a) The number of qualified disabled veterans who submitted a
bid for a state procurement contract.
(b) The number of qualified disabled veterans who entered into
procurement contracts with this state and the total value of those
procurement contracts.
(c) Whether the department achieved the goal described in this
subsection.
(d) The recommendations described in subsection (10).

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

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

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

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

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

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

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

(15) (14) As used in this section:

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

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

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

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

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

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

d) "Person" means any of the following:

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

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

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

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

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

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

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

(i) "Veteran" means an individual who meets both of the
following:
(i) Is a veteran as defined in section 1 of 1965 PA 190, MCL 35.61.
(ii) Was released from his or her service with an honorable or general discharge.