

SENATE BILL NO. 1214

November 05, 2020, Introduced by Senator NESBITT and referred to the Committee on Appropriations.

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.

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
5 the legislature has not otherwise expressly provided. If consistent

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

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

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

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

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

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

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

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

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

11 (4) ~~The~~ **Except as otherwise provided in this subsection, the**
12 department may delegate its procurement authority to other state
13 agencies within dollar limitations and for designated types of
14 procurements. **Beginning October 1, 2020, the department shall**
15 **delegate its procurement authority to other state agencies upon the**
16 **request of a state agency for all purchases or contracts under**
17 **\$5,000.00.** The department may withdraw delegated authority upon a
18 finding that a state agency did not comply with departmental
19 procurement directives.

20 (5) **Beginning October 1, 2020, for construction, repair,**
21 **remodeling, or demolition of facilities under section 241 and for**
22 **purchases under this section, if a state agency other than the**
23 **department can obtain the contracted goods or services from a third**
24 **party for a price less than that for which the department can**
25 **obtain the contracted goods or services or for a price less than or**
26 **equal to the price for which the department can obtain the**
27 **contracted goods or services, but with a faster delivery or**
28 **completion of the contracted goods or services, the department**
29 **shall provide the contracted services for the reduced price or same**

1 price with a faster delivery or completion or facilitate the state
2 agency other than the department in obtaining the contracted goods
3 or services from the third party at the lesser price or same price
4 with a faster delivery or completion.

5 (6) ~~(5)~~—The department may enter into lease purchases or
6 installment purchases for periods not exceeding the anticipated
7 useful life of the items purchased unless otherwise prohibited by
8 law.

9 (7) ~~(6)~~—The department shall issue directives for the
10 procurement, receipt, inspection, and storage of supplies,
11 materials, and equipment, and for printing and services needed by
12 state agencies. The department shall provide standard
13 specifications and standards of performance applicable to
14 purchases.

15 (8) ~~(7)~~—The department may enter into a cooperative purchasing
16 agreement with 1 or more other states or public entities for the
17 purchase of goods, including, but not limited to, recycled goods,
18 and services necessary for state programs.

19 (9) ~~(8)~~—In awarding a contract under this section, the
20 department shall give a preference of up to 10% of the amount of
21 the contract to a qualified disabled veteran. If the qualified
22 disabled veteran otherwise meets the requirements of the contract
23 solicitation and with the preference is the lowest bidder, the
24 department shall enter into a procurement contract with the
25 qualified disabled veteran under this act. If 2 or more qualified
26 disabled veterans are the lowest bidders on a contract, all other
27 things being equal, the qualified disabled veteran with the lowest
28 bid shall be awarded the contract under this act.

29 (10) ~~(9)~~—It is the goal of the department to award each year

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

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

11 (b) The number of qualified disabled veterans who entered into
12 procurement contracts with this state and the total value of those
13 procurement contracts.

14 (c) Whether the department achieved the goal described in this
15 subsection.

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

17 **(11)** ~~(10)~~—Each year, the department shall review the progress
18 of all state agencies in meeting the 5% goal with input from
19 statewide veterans service organizations and from the business
20 community, including businesses owned by qualified disabled
21 veterans, and shall make recommendations to each house of the
22 legislature regarding continuation, increases, or decreases in the
23 percentage goal. The recommendations shall be based upon the number
24 of businesses that are owned by qualified disabled veterans and on
25 the continued need to encourage and promote businesses owned by
26 qualified disabled veterans.

27 **(12)** ~~(11)~~—To assist the department in reaching the goal
28 described in subsection ~~(9)~~ **(10)**, the governor shall recommend to
29 the legislature changes in programs to assist businesses owned by

1 qualified disabled veterans.

2 **(13)** ~~(12)~~ Beginning October 1, 2017, the department and all
3 state agencies may not enter into a contract with a person to
4 acquire or dispose of supplies, services, or information technology
5 unless the contract includes a representation that the person is
6 not currently engaged in, and an agreement that the person will not
7 engage in, the boycott of a person based in or doing business with
8 a strategic partner.

9 **(14)** ~~(13)~~ The following records are exempt from disclosure
10 under the freedom of information act, 1976 PA 442, MCL 15.231 to
11 15.246, as provided in this subsection:

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

16 (b) Records containing a trade secret as defined under section
17 2 of the uniform trade secrets act, 1998 PA 448, MCL 445.1902, or
18 financial or proprietary information submitted in connection with
19 the authority granted under this section.

20 **(15)** ~~(14)~~ As used in this section:

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

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

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

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

29 (iii) Conduct necessary to comply with applicable law in the

1 person's home jurisdiction.

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

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

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

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

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

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

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

20 (g) "Strategic partner" means a strategic partner described in
21 22 USC 8601 to 8606.

22 (h) "Veteran" means an individual who meets both of the
23 following:

24 (i) Is a veteran as defined in section 1 of 1965 PA 190, MCL
25 35.61.

26 (ii) Was released from his or her service with an honorable or
27 general discharge.