

SENATE BILL No. 702

December 3, 2013, Introduced by Senators COLBECK, NOFS, PROOS, GREEN, CASWELL, BRANDENBURG, MARLEAU and BOOHER and referred to the Committee on Appropriations.

A bill to amend 1984 PA 431, entitled
"The management and budget act,"
by amending sections 261 and 268 (MCL 18.1261 and 18.1268), section 261 as amended by 2012 PA 555 and section 268 as amended by 2007 PA 183.

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
6 with federal statutes, in all purchases made by the department, all
7 other things being equal, preference shall be given to products
8 manufactured or services offered by Michigan-based firms or by
9 facilities with respect to which the operator is designated as a

1 clean corporate citizen under part 14 of the natural resources and
2 environmental protection act, 1994 PA 451, MCL 324.1401 to
3 324.1427. The department shall solicit competitive bids from the
4 private sector whenever practicable to efficiently and effectively
5 meet the state's needs. The department shall first determine that
6 competitive solicitation of bids in the private sector is not
7 appropriate before using any other procurement method for an
8 acquisition.

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

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

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

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 (e) Procurement of goods or services is in response to a

1 declared state of energy emergency under 1982 PA 191, MCL 10.81 to
2 10.89.

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

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

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

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

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

26 ~~—— (8) In awarding a contract under this section, the department~~
27 ~~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) As used in this section:~~

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

~~—— (b) "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).~~

~~—— (c) "Veteran" means a person who served in the army, air force, navy, marine corps, or coast guard and who was discharged or released from his or her service with an honorable or general discharge.~~

(8) BEGINNING OCTOBER 1, 2014, THE DEPARTMENT AND ALL STATE AGENCIES THAT HAVE HAD PROCUREMENT AUTHORITY DELEGATED TO THEM BY THE DEPARTMENT SHALL AWARD CONTRACTS THEY AWARD UNDER THIS SECTION WITH AN EXPECTED CONTRACT AWARD OF \$100,000.00 OR MORE BY USING A

1 BID SCORECARD SYSTEM THAT TALLIES CONTRACT BIDS BASED ON TECHNICAL
2 AND CRITICAL PERFORMANCE REQUIREMENTS, COST EVALUATION, AND LABOR
3 EVALUATION. THE BID SCORECARD SYSTEM SHALL PROVIDE FOR ALL OF THE
4 FOLLOWING:

5 (A) THE TECHNICAL AND CRITICAL PERFORMANCE STANDARDS SHALL BE
6 NUMERICAL AND VERIFIABLE AND SHALL COUNT FOR 10% OF THE POINTS ON
7 THE BID SCORECARD.

8 (B) THE COST EVALUATION SHALL BE BASED ON THE BID PRICE AND
9 SHALL COUNT FOR 70% OF THE POINTS ON THE BID SCORECARD.

10 (C) THE LABOR EVALUATION SHALL COUNT FOR 20% OF THE POINTS ON
11 THE BID SCORECARD, WITH UP TO 1/2 OF THOSE POINTS AWARDED FOR
12 EMPLOYEES WHO ARE VETERANS OR QUALIFIED DISABLED VETERANS AND UP TO
13 1/2 OF THOSE POINTS AWARDED FOR EMPLOYEES WHO ARE RESIDENTS OF THIS
14 STATE.

15 (D) THE SCOPE OF THE LABOR EVALUATION SHALL INCLUDE PRIME
16 CONTRACTING AGENTS AND ANY OTHER BUSINESS THAT WILL FULFILL
17 CONTRACT DELIVERY REQUIREMENTS AS A SUBCONTRACTOR TO A PRIME
18 CONTRACTOR.

19 (9) THE BID SCORECARD SYSTEM DESCRIBED IN SUBSECTION (8) SHALL
20 ALSO PROVIDE THAT IF ANY CHANGE IS MADE TO THE EVALUATION CRITERIA
21 IN A REQUEST FOR PROPOSAL, THEN THE DEPARTMENT OR THE STATE AGENCY
22 THAT HAD PROCUREMENT AUTHORITY DELEGATED TO IT SHALL SIMULTANEOUSLY
23 COMMUNICATE THOSE CHANGES TO ALL BIDDERS ON THAT CONTRACT AND SHALL
24 ALSO SIMULTANEOUSLY COMMUNICATE ANY RESPONSES TO AN INQUIRY FROM AN
25 INDIVIDUAL BIDDER TO ALL BIDDERS ON THAT CONTRACT.

26 (10) AS LONG AS THE BIDDER MEETS THE MINIMUM BID REQUIREMENTS
27 AS DETERMINED BY THE DEPARTMENT, THE DEPARTMENT SHALL AWARD THE

1 CONTRACT TO THE BIDDER WITH THE HIGHEST POINT TALLY DESCRIBED IN
2 SUBSECTION (8) AS DETERMINED BY THE DEPARTMENT.

3 (11) THE DEPARTMENT SHALL DEVELOP AUTOMATION TOOLS TO ASSIST
4 IN THE APPLICATION OF THE BID SCORECARD SYSTEM DESCRIBED IN
5 SUBSECTION (8) AND SHALL MAKE THE BID SCORECARD SYSTEM AVAILABLE TO
6 THE PUBLIC ON THE DEPARTMENT'S INTERNET WEBSITE.

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

13 (a) Filed a Michigan ~~single-business tax return or Michigan~~
14 ~~business tax return~~ showing a portion or all of the income tax base
15 allocated or apportioned to the state of Michigan pursuant to the
16 former single business tax act, 1975 PA 228, ~~or the Michigan~~
17 business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, **OR THE**
18 **INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.1 TO 206.713.**

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

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

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

1 (3) A bidder certifying that it meets the criteria for a
2 Michigan business listed in subsections (1), ~~and (2)~~, **AND (12)**
3 shall authorize the department of treasury to verify that the
4 bidder has or has not met 1 of the 3 criteria in subsection (1).
5 This authorization shall permit the department of treasury to
6 disclose the verifying information to the procuring agency in
7 accordance with the procedures established by section 28 of 1941 PA
8 122, MCL 205.28.

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

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

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

27 (7) A bidder waives any entitlement to claim a preference

1 under this act if the bidder has not certified in its bid that the
2 bidder is a Michigan business and has not authorized the department
3 of treasury to release information necessary to verify the
4 entitlement.

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

9 (9) A business that purposefully or willfully submits a false
10 certification that it is a Michigan business or ~~falsely indicates~~
11 ~~the state in which it has its principal place of business is guilty~~
12 ~~of a felony, punishable by a fine of not less than \$25,000.00.~~ **ANY**
13 **OTHER FALSE INFORMATION IN SUPPORT OF A BID IS RESPONSIBLE FOR A**
14 **CIVIL VIOLATION, AND THE DEPARTMENT SHALL IMPOSE A CIVIL FINE**
15 **AGAINST THAT ENTITY IN AN AMOUNT EQUAL TO 10% OF THE CONTRACT VALUE**
16 **IN WHICH THE FALSE CERTIFICATION OR FALSE INFORMATION WAS MADE.**

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

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

25 (12) **BEGINNING OCTOBER 1, 2014, BEFORE A BIDDER IS ELIGIBLE TO**
26 **BE CERTIFIED A MICHIGAN BUSINESS AND BEFORE A BIDDER IS ELIGIBLE TO**
27 **BID FOR A STATE CONTRACT, THE BIDDER SHALL DISCLOSE TO THE**

1 DEPARTMENT ALL OF THE FOLLOWING:

2 (A) THE NUMBER AND PERCENTAGE OF ITS EMPLOYEES WHO WORK MORE
3 THAN 20 HOURS PER WEEK AND WHO HAVE BEEN EMPLOYED BY THAT BUSINESS
4 FOR THE IMMEDIATE AND PRECEDING 90-DAY PERIOD WHO ARE RESIDENTS OF
5 THIS STATE.

6 (B) THE PERCENTAGE OF ITS EMPLOYEES WHO WORK MORE THAN 20
7 HOURS PER WEEK AND WHO HAVE BEEN EMPLOYED BY THAT BUSINESS FOR THE
8 IMMEDIATE AND PRECEDING 90-DAY PERIOD WHO ARE VETERANS.

9 (C) THE PERCENTAGE OF ITS EMPLOYEES WHO WORK MORE THAN 20
10 HOURS PER WEEK AND WHO HAVE BEEN EMPLOYED BY THAT BUSINESS FOR THE
11 IMMEDIATE AND PRECEDING 90-DAY PERIOD WHO ARE QUALIFIED DISABLED
12 VETERANS.

13 (13) BEGINNING OCTOBER 1, 2014, THE DEPARTMENT SHALL MAINTAIN
14 A LIST OF ALL MICHIGAN BUSINESSES CERTIFIED UNDER THIS SECTION ON
15 THE DEPARTMENT'S INTERNET WEBSITE.

16 (14) AS USED IN THIS SECTION:

17 (A) "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 (B) "VETERAN" MEANS A PERSON WHO SERVED IN THE ARMY, AIR
21 FORCE, NAVY, MARINE CORPS, OR COAST GUARD AND WHO WAS DISCHARGED OR
22 RELEASED FROM HIS OR HER SERVICE WITH AN HONORABLE OR GENERAL
23 DISCHARGE.