

# HOUSE BILL NO. 5279

December 05, 2019, Introduced by Rep. Warren and referred to the Committee on Government Operations.

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

**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,  
3 remodeling, or demolition of a facility unless the contract is let  
4 pursuant to a bidding procedure that is approved by the board. The



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1 department shall issue directives prescribing procedures to be used  
2 to implement this section **and section 241d**. The procedures shall  
3 require a competitive solicitation in the award of any contract for  
4 construction, repair, remodeling, or demolition of a facility.

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

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

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

27 (a) A bidder who complies with all bid specifications and  
28 requirements.

29 (b) A bidder who has been determined by the department to be



1 responsible by the following criteria:

2 (i) The bidder's financial resources.

3 (ii) The bidder's technical capabilities.

4 (iii) The bidder's professional experience.

5 (iv) The bidder's past performance.

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

7 (vi) The bidder's business integrity.

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

13 (i) Technical design.

14 (ii) Technical approach.

15 (iii) Quality of proposed personnel.

16 (iv) Management plans.

17 **Sec. 241d. (1) If the department enters into a contract for**  
18 **the construction, reconstruction, installation, demolition,**  
19 **maintenance, or repair of any facility that costs \$25,000,000.00 or**  
20 **more, the department shall contract for the services of an owner's**  
21 **project manager to serve as the department's project representative**  
22 **and consultant during the planning, design, and implementation for**  
23 **the construction, reconstruction, installation, demolition,**  
24 **maintenance, or repair of that facility. For projects that cost**  
25 **less than \$25,000,000.00 under this section, the department may**  
26 **contract for the services of an owner's project manager to serve as**  
27 **the department's project representative and consultant as provided**  
28 **in this section.**



1 (2) The basic duties of the owner's project manager shall  
2 include, but are not limited to, all of the following:

3 (a) Providing advice and consultation during project planning,  
4 feasibility, and design.

5 (b) Providing value engineering.

6 (c) Providing project scoping.

7 (d) Providing independent cost estimating.

8 (e) Providing project cost management.

9 (f) Providing project schedule management.

10 (g) Providing general contractor and subcontractor  
11 prequalification, when applicable, and selection, negotiation with,  
12 and oversight of the designer and general contractor or  
13 construction manager for the project.

14 (h) Ensuring the timely preparation of control budgets and  
15 schedules on a time scale, which shall serve as control standards  
16 for monitoring timely, on-cost performance of the project.

17 (i) Assisting in project evaluation including, but not limited  
18 to, written evaluations of the performance of the designer,  
19 contractor, construction manager, and any subcontractor involved in  
20 the project.

21 (3) Total compensation for owner's project manager services  
22 shall not exceed 3% of total project cost, excluding land  
23 acquisition cost, as estimated in the third-party cost estimate  
24 documented in the total project cost developed based on the  
25 department-approved schematic design. The fee described in this  
26 subsection does not include land survey, geotechnical evaluation  
27 and investigation, aerial survey, third-party cost estimating,  
28 materials testing, commissioning agent, quality inspection agents,  
29 owner third-party consultants, or any other department-requested



1 specialized consulting services subcontracted by the owner's  
2 project manager on behalf of the department. Compensation for  
3 owner's project manager during planning, feasibility, and schematic  
4 design shall be based on scope of services and associated fee,  
5 which fee shall be payable monthly and shall be captured within the  
6 owner's project manager total fee of not more than 3% of total  
7 project cost approved with the department-approved schematic  
8 design. Authorization for each subsequent design phase after  
9 schematic design and for the construction phase of the owner's  
10 project manager services will be negotiated and contracted timely  
11 with the advancement of the project by the department.

12 (4) The department must use a qualifications-based selection  
13 process to procure the services of the owner's project manager.

14 (5) As used in this section, "owner's project manager" means  
15 an individual, corporation, limited liability company, partnership,  
16 sole proprietorship, joint stock company, joint venture, or other  
17 entity engaged in the practice of providing project management and  
18 project control services for the construction and oversight of  
19 building projects. The owner's project manager professional-in-  
20 charge shall be a person registered as a professional engineer with  
21 at least 10 years of experience in project management and project  
22 controls in the design, construction, and managing of building  
23 projects or, if not registered as a professional engineer, a  
24 graduate of an accredited engineering school with at least 15 years  
25 of relevant experience in project management and project controls  
26 in the design, construction, and managing of building projects. The  
27 owner's project manager shall be independent of the designer,  
28 general contractor, construction manager, and any subcontractor  
29 involved in the project.

