**Executive Directive**

**No. 2019-15**

To: State Department Directors and Autonomous Agency Heads

From: Governor Gretchen Whitmer

Date: July 29, 2019

Re: Putting Michigan First in State Purchasing Decisions

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The State of Michigan’s purchasing decisions should put the well-being of the state’s businesses, workers, communities, and families first. This means doing business with suppliers that create and keep well-paying jobs here in Michigan, but that is not all. Putting Michigan first also requires that the state’s purchasing decisions consider suppliers’ environmental track records, their compliance with Michigan’s labor and employment laws and regulations, and their investment in Michigan’s economically distressed areas.

For instance, businesses that fail to comply with laws and regulations regarding labor and employment matters such as equal pay and payroll fraud undermine Michigan’s economic and social priorities and harm its workers and taxpayers. Likewise, poor sustainability practices and noncompliance with environmental laws and regulations harm the health of Michigan’s economy, natural resources, and residents. The state must ensure it is duly accounting for considerations such as these when deciding with whom to do business.

The Department of Technology, Management, and Budget (the “Department”) is required by section 261 of The Management and Budget Act, 1984 PA 431, as amended, MCL 18.1261 (the “Act”), to 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. The Department is required to solicit competitive bids from the private sector whenever practicable to efficiently and effectively meet the state’s needs. And the Department is empowered to make all discretionary decisions concerning the solicitation, award, amendment, cancellation, and appeal of state contracts. Section 241 of the Act, MCL 18.1241, further authorizes the Department to award contracts for the construction, alteration, repair, or demolition of a facility, and imposes requirements on the exercise of that authority.

In some instances, the Act requires that the Department afford a preference to Michigan-based job providers in its procurement decisions. Section 261 of the Act, MCL 18.1261, requires that, in all purchases made by the Department, all other things being equal, preference must be given to goods manufactured or services offered by Michigan-based firms, if consistent with federal statutes. Section 268 of the Act, MCL 18.1268, further requires that, if the low bid for a state procurement exceeds $100,000.00 and is from a business located in a state which applies a preference law against out-of-state businesses, the Department shall prefer a bid from a Michigan business in the same manner in which the out-of-state bidder would be preferred in its home state.

Section 131 of the Act, MCL 18.1131, permits the director of the Department to issue, alter, or rescind administrative and procedural directives as determined to be necessary for the effective administration of the Act. In addition, the Department may delegate its procurement authority to other state agencies within dollar limitations and for designated types of procurements. As governor, I have a duty to inquire into the administration of the Act.

Acting pursuant to sections 1 and 8 of article 5 of the Michigan Constitution of 1963, I direct the following:

1. The Department shall perform a review of the state’s procurement practices and shall adopt any policies and procedures necessary to ensure that, consistent with state and federal law, the Department and other state departments and agencies exercising procurement authority delegated by the Department:
   1. Fully comply with and effectuate the preferences to which Michigan businesses are entitled under MCL 18.1261 and MCL 18.1268; and
   2. Make purchasing decisions that are designed to secure for the state and its residents the greatest possible economic, environmental, and societal benefit.
2. The Department shall adopt policies and procedures requiring that, consistent with state and federal law, the Department and other state departments and agencies exercising procurement authority delegated by the Department shall include the following considerations in their evaluation of competitive bids from potential suppliers:
   1. The overall economic impact of the bid to Michigan businesses and workers;
   2. The wages and benefits offered by a potential supplier to its workers;
   3. The potential supplier’s history of compliance with labor and employment laws and regulations, including the Workforce Opportunity Wage Act, MCL 408.411 *et seq.*, the Fair Labor Standards Act of 1938, 29 USC 201 *et seq.*, and the National Labor Relations Act, 29 USC 151 *et seq.*;
   4. The potential supplier’s environmental track record and sustainability practices, including the potential supplier’s history of compliance with environmental laws and regulations such as the Natural Resources and Environmental Protection Act, MCL 324.101 *et seq.*, the Clean Water Act, 33 USC 1251 *et seq.*, and the Clean Air Act, 42 USC 7401 *et seq.*; and
   5. Whether the potential supplier qualifies as a Geographically-Disadvantaged Business Enterprise as defined by Executive Directive 2019-08.
3. The Department, in conjunction with the Department of Licensing and Regulatory Affairs and the Department of Environment, Great Lakes, and Energy, shall develop and implement policies and procedures for sharing information regarding potential suppliers’ histories of compliance with environmental and labor and employment laws and regulations.
4. The director of the Department shall report to the governor annually on the results of this directive, including key performance indicators, so the governor can weigh the directive’s effectiveness. The Department shall provide the governor with this annual report by December 1 of each year and shall make the report available to the public on its website.
5. All departments and agencies shall follow the policies and procedures developed by the Department in connection with this directive for all purchases of goods and services, including construction services, to the fullest extent permitted by state and federal law.
6. The director of the Department shall issue directives and adopt changes to the Administrative Guide to State Government as necessary to implement this directive. The director of the Department shall enforce the requirements of this directive and any policies, procedures, or department directives issued to implement this directive. In exercising general supervisory control over the functions and activities of all administrative departments, boards, commissioners and officers of the state, and of all state institutions as required by § 3 of 1921 PA 2, as amended, MCL 17.3, the State Administrative Board shall monitor compliance with the requirements of this directive. A report of a violation of this directive shall be transmitted to the director of the Department, the secretary of the State Administrative Board, and the governor’s Chief Compliance Officer. The State Administrative Board may take action to enforce the requirements of this directive to the extent consistent with 1921 PA 2, MCL 17.1 to 17.3.

This directive is effective immediately.

Thank you for your cooperation in implementing this directive.

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Gretchen Whitmer

Governor