A bill to amend 1984 PA 431, entitled "The management and budget act,"
by amending sections 241c and 261 (MCL 18.1241c and 18.1261),
section 241c as added by 2016 PA 527 and section 261 as amended by
2020 PA 174.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 241c. (1) Beginning October 1, 2017, the department or a state agency may not enter into a contract with a person for the construction, alteration, or repair of a state building or other
state property 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.

(2) Beginning on the effective date of the amendatory act that added this subsection, the department or a state agency may not enter into a prime contract for the construction, alteration, or repair of a state building or other state property unless the contract includes all of the following:

(a) A representation that the prime contractor does not have a policy, practice, guidance, or directive to economically boycott a business enterprise.

(b) An agreement that the prime contractor may not adopt a policy, practice, guidance, or directive to economically boycott a business enterprise.

(c) An agreement that the prime contractor may not award a first-tier subcontract that has a value greater than 10% of the total value of the prime contract to a subcontractor that fails to certify, in writing, both of the following:

(i) That the subcontractor does not have a policy, practice, guidance, or directive to economically boycott a business enterprise.

(ii) That the subcontractor may not adopt a policy, practice, guidance, or directive to economically boycott a business enterprise during the term of the subcontract.

(d) An agreement that the prime contractor may not structure subcontract tiers in a manner designed to avoid the agreement described in subdivision (c) by enabling a subcontractor to perform more than 10% of the total value of the prime contract as a lower-
tier subcontractor.

(e) An agreement that if the prime contractor breaches the prime contract under subdivision (a), (b), (c), or (d), the prime contract terminates for default and the prime contractor is prohibited from entering into a contract described in this act.

(3) (2) As used in this section, "boycott", "business enterprise", "economically boycott", "first-tier subcontract", "lower-tier subcontract", "person", "prime contract", "prime contractor", and "strategic partner" mean those terms 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 statute, law, in all purchases made by the department, all other things being equal, preference must 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 the designated representative of the director.

(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. If a state agency has the department's procurement authority delegated to it under this subsection and if it chooses to exercise an option under an existing procurement contract to continue that procurement contract, before exercising that option, the state agency shall first obtain written approval from the department that exercising the option is in the best interest of this state.

(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 must 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 must be based on 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) Beginning on the effective date of the amendatory act that added this subsection, the department and all state agencies may not enter into a prime contract to acquire or dispose of supplies, services, or information technology unless the contract includes all of the following:

(a) A representation that the prime contractor does not have a policy, practice, guidance, or directive to economically boycott a business enterprise.

(b) An agreement that the prime contractor may not adopt a policy, practice, guidance, or directive to economically boycott a business enterprise.

(c) An agreement that the prime contractor may not award a first-tier subcontract that has a value greater than 10% of the total value of the prime contract to a subcontractor that fails to certify, in writing, both of the following:

(i) That the subcontractor does not have a policy, practice, guidance, or directive to economically boycott a business enterprise.
(ii) That the subcontractor may not adopt a policy, practice, guidance, or directive to economically boycott a business enterprise during the term of the subcontract.

(d) An agreement that the prime contractor may not structure subcontract tiers in a manner designed to avoid the agreement described in subdivision (c) by enabling a subcontractor to perform more than 10% of the total value of the prime contract as a lower-tier subcontract.

(e) An agreement that if the prime contractor breaches the prime contract under subdivision (a), (b), (c), or (d), the prime contract terminates for default and the prime contractor is prohibited from entering into a contract described in this act.

(14) (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.

(15) (14) The department shall develop policies and procedures that require all procurement contracts entered into by the department or a state agency, including departments that have delegated procurement authority under this act, to include performance-related liquidated damages or performance targets with incentives in all procurement contracts. The department shall also
develop policies and procedures that require the department or state agency to enforce these provisions. Departments or state agencies acting under delegated authority shall inform the department of relevant performance issues. Exceptions to the inclusion or enforcement of performance-related contract provisions may only be granted by the department as provided in a written or electronic record by the department.

(16) 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 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) "Business enterprise" means a for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including, but not limited to, a subsidiary, parent company, or affiliate, but excluding a sole proprietorship, to which any of the following apply, without violating state or federal law:

(i) It engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy, timber, mining, or agriculture.

(ii) It engages in, facilitates, or supports the manufacture,
import, distribution, marketing or advertising, sale, or lawful use
of firearms, ammunition, or component parts and accessories of
firearms or ammunition.

(iii) It does business with a business enterprise described in
subparagraph (i) or (ii).

(d) "Economically boycott" means, without an ordinary business
purpose, refusing to deal with, terminating business activities
with, or taking any other commercial action that is intended to
penalize, inflict economic harm on, limit commercial relations
with, or change or limit the activities of a business enterprise.

(e) "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.

(f) "First-tier subcontract" means a subcontract entered into
by a subcontractor and the prime contractor for the purpose of
carrying out the prime contract.

(g) "Lower-tier subcontractor" means a person that enters into
a subcontract with a subcontractor of a prime contract for the
purpose of carrying out the prime contract.

(h) "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).

(i) "Prime contract" means a contract between the department
or a state agency and a prime contractor.

(j) "Prime contractor" means the person with whom the department or state agency enters a prime contract.

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

(l) "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).

(m) "Strategic partner" means a strategic partner described in 22 USC 8601 to 8607.

(n) "Veteran" means an individual who meets both of the following:

(i) Is a veteran, as that term is 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.