

# HOUSE BILL NO. 4344

April 11, 2023, Introduced by Reps. Cavitt, Posthumus, Fox, Rigas, Kunse, Prestin, Hoadley, Markkanen, Maddock, Aragona, Alexander, DeSana, Bierlein, Johnsen, DeBoyer, Schmaltz, St. Germaine, Jaime Greene, Roth, Smit, Paquette, Neyer, Beeler, Harris, Outman, Friske, Meerman, Phil Green, BeGole, Schuette, DeBoer, Tisdell and Borton and referred to the Committee on Regulatory Reform.

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:**

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

1 state property unless the contract includes a representation that  
2 the person is not currently engaged in, and an agreement that the  
3 person ~~will~~**may** not engage in, the boycott of a person based in or  
4 doing business with a strategic partner.

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

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

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

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

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

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

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

1 tier subcontractor.

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

6 (3) ~~(2)~~—As used in this section, "boycott", "business  
7 enterprise", "economically boycott", "first-tier subcontract",  
8 "lower-tier subcontractor", "person", "prime contract", "prime  
9 contractor", and "strategic partner" mean those terms as defined in  
10 section 261.

11 Sec. 261. (1) The department shall provide for the purchase  
12 of, the contracting for, and the providing of supplies, materials,  
13 services, insurance, utilities, third party financing, equipment,  
14 printing, and all other items as needed by state agencies for which  
15 the legislature has not otherwise expressly provided. If consistent  
16 with federal ~~statutes, law~~, in all purchases made by the  
17 department, all other things being equal, preference ~~shall~~**must** be  
18 given to products manufactured or services offered by Michigan-  
19 based firms or by facilities with respect to which the operator is  
20 designated as a clean corporate citizen under part 14 of the  
21 natural resources and environmental protection act, 1994 PA 451,  
22 MCL 324.1401 to 324.1429, or to biobased products whose content is  
23 sourced in this state. The department shall solicit competitive  
24 bids from the private sector whenever practicable to efficiently  
25 and effectively meet the state's needs. The department shall first  
26 determine that competitive solicitation of bids in the private  
27 sector is not appropriate before using any other procurement method  
28 for an acquisition.

29 (2) The department shall make all discretionary decisions

1 concerning the solicitation, award, amendment, cancellation, and  
2 appeal of state contracts.

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

6 (a) Procurement of goods or services is necessary for the  
7 imminent protection of public health or safety or to mitigate an  
8 imminent threat to public health or safety, as determined by the  
9 director or ~~his or her~~ **the** designated representative **of the**  
10 **director.**

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

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

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

19 **(d)** ~~(e)~~ Procurement of goods or services is in response to a  
20 declared state of energy emergency under 1982 PA 191, MCL 10.81 to  
21 10.89.

22 **(e)** ~~(f)~~ Procurement of goods or services is within a state  
23 agency's purchasing authority delegated under subsection (4), and  
24 the state agency has established policies or procedures approved by  
25 the department to ensure that goods or services are purchased by  
26 the state agency at fair and reasonable prices.

27 (4) The department may delegate its procurement authority to  
28 other state agencies within dollar limitations and for designated  
29 types of procurements. The department may withdraw delegated

1 authority upon a finding that a state agency did not comply with  
2 departmental procurement directives. If a state agency has the  
3 department's procurement authority delegated to it under this  
4 subsection and if it chooses to exercise an option under an  
5 existing procurement contract to continue that procurement  
6 contract, before exercising that option, the state agency ~~shall~~  
7 **must** first obtain written approval from the department that  
8 exercising the option is in the best interest of this state.

9 (5) The department may enter into lease purchases or  
10 installment purchases for periods not exceeding the anticipated  
11 useful life of the items purchased unless otherwise prohibited by  
12 law.

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

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

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

1 the qualified disabled veteran with the lowest bid ~~shall~~**must** be  
2 awarded the contract under this act.

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

12 (a) The number of qualified disabled veterans ~~who~~**that**  
13 submitted a bid for a state procurement contract.

14 (b) The number of qualified disabled veterans ~~who~~**that** entered  
15 into procurement contracts with this state and the total value of  
16 those procurement contracts.

17 (c) Whether the department achieved the goal described in this  
18 subsection.

19 (d) The recommendations described in subsection (10).

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

1           (11) To assist the department in reaching the goal described  
2 in subsection (9), the governor shall recommend to the legislature  
3 changes in programs to assist businesses owned by qualified  
4 disabled veterans.

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

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

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

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

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

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

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

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

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

13           (14) ~~(13)~~—The following records are exempt from disclosure  
14 under the freedom of information act, 1976 PA 442, MCL 15.231 to  
15 15.246, as provided in this subsection:

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

20           (b) Records containing a trade secret as defined under section  
21 2 of the uniform trade secrets act, 1998 PA 448, MCL 445.1902, or  
22 financial or proprietary information submitted in connection with  
23 the authority granted under this section.

24           (15) ~~(14)~~—The department shall develop policies and procedures  
25 that require all procurement contracts entered into by the  
26 department or a state agency, including departments that have  
27 delegated procurement authority under this act, to include  
28 performance-related liquidated damages or performance targets with  
29 incentives in all procurement contracts. The department shall also



1 develop policies and procedures that require the department or  
2 state agency to enforce these provisions. Departments or state  
3 agencies acting under delegated authority shall inform the  
4 department of relevant performance issues. Exceptions to the  
5 inclusion or enforcement of performance-related contract provisions  
6 may only be granted by the department as provided in a written or  
7 electronic record by the department.

8 **(16)** ~~(15)~~—As used in this section:

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

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

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

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

17 (iii) Conduct necessary to comply with applicable law in the  
18 person's home jurisdiction.

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

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

29 (ii) It engages in, facilitates, or supports the manufacture,

1 import, distribution, marketing or advertising, sale, or lawful use  
2 of firearms, ammunition, or component parts and accessories of  
3 firearms or ammunition.

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

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

11 (e) ~~(e)~~—"Financial or proprietary information" means  
12 information that has not been publicly disseminated or which is  
13 unavailable from other sources, the release of which might cause  
14 the submitter of the information competitive harm.

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

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

21 (h) ~~(d)~~—"Person" means any of the following:

22 (i) An individual, corporation, company, limited liability  
23 company, business association, partnership, society, trust, or any  
24 other nongovernmental entity, organization, or group.

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

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

29 (i) "Prime contract" means a contract between the department

1 or a state agency and a prime contractor.

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

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

7 (l) ~~(f)~~—"Service-connected disability" means a disability  
8 incurred or aggravated in the line of duty in the active military,  
9 naval, or air service as described in 38 USC 101(16).

10 (m) ~~(g)~~—"Strategic partner" means a strategic partner  
11 described in 22 USC 8601 to ~~8606~~.8607.

12 (n) ~~(h)~~—"Veteran" means an individual who meets both of the  
13 following:

14 (i) Is a veteran, as **that term is** defined in section 1 of 1965  
15 PA 190, MCL 35.61.

16 (ii) Was released from ~~his or her~~ service with an honorable or  
17 general discharge.