

HOUSE BILL NO. 5066

September 28, 2023, Introduced by Reps. Martin, Thompson, Hoadley, Alexander, Bierlein, Meerman, DeBoyer, Maddock, Bruck, Johnsen, Smit, Fink, Jaime Greene, Markkanen, Cavitt, Rigas, Roth and Kunse and referred to the Committee on Government Operations.

A bill to amend 1984 PA 431, entitled "The management and budget act," by amending sections 113, 114, 241, 241c, and 261 (MCL 18.1113, 18.1114, 18.1241, 18.1241c, and 18.1261), section 113 as amended by 2018 PA 389, section 114 as amended by 2001 PA 61, section 241 as amended by 2012 PA 430, section 241c as added by 2016 PA 527, and section 261 as amended by 2020 PA 174, and by adding section 272.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 113. (1) "Capital outlay" means a project or facility

1 financed either in whole or in part with state funds, including
2 lease purchase agreements, to demolish, construct, renovate, or
3 equip a building or facility for which total project costs exceed
4 \$1,000,000.00. These projects may be on state owned property,
5 property owned by an institution of higher education, property
6 owned by community colleges, or property under the control of the
7 state building authority.

8 (2) "Community college" means a community college or a junior
9 college.

10 (3) "Controlled entity" means an entity to which any of the
11 following apply:

12 (a) The entity is owned by the government of a foreign country
13 of concern.

14 (b) The government of a foreign country of concern has a
15 controlling interest in the entity.

16 (c) The entity is organized under the laws of, or has its
17 principal place of business in, a foreign country of concern.

18 (4) "Controlling interest" means the possession of the power
19 to direct or cause the direction of the management or policies of
20 an entity, whether through ownership of securities, by contract, or
21 otherwise. A government that directly or indirectly has the right
22 to vote 25% or more of the voting interests of an entity or is
23 entitled to 25% or more of the entity's profit is presumed to
24 possess a controlling interest.

25 (5) ~~(3)~~"Department" means the department of technology,
26 management, and budget.

27 (6) ~~(4)~~"Directives" means intergovernmental, interagency, or
28 interdepartment administrative or procedural guidelines or
29 instructions ~~which~~**that** do not affect the rights of, or procedures

1 and practices available to, the public.

2 (7) ~~(5)~~—"Director" means the director of the department of
3 technology, management, and budget.

4 (8) ~~(6)~~—"Energy conservation measure" means improvement of a
5 building structurally or the installation of equipment or materials
6 in a building for the purpose of reducing energy consumption or
7 cost, increasing energy efficiency, or allowing the use of a
8 renewable resource for fuel.

9 Sec. 114. (1) "Facility" means a building or structure along
10 with the building's or structure's grounds, approaches, services,
11 and appurtenances owned by, or leased through a building authority
12 by, the state such as office buildings, research buildings,
13 academic buildings, laboratories, hospitals, prisons, recreational
14 structures, garages, warehouses, physical plant buildings, energy
15 or power plants, and any other building or project included by the
16 director if the director considers the building or project to be in
17 the public interest. Facility does not include any of the
18 following:

19 (a) A building or structure for an institution of higher
20 education except as mutually agreed ~~upon~~**on** by the director and the
21 governing board of the state institution of higher education.

22 (b) A road, bridge, or railroad under the jurisdiction of the
23 state transportation department.

24 (c) An existing building or structure ~~which~~**that** is mutually
25 agreed to be excluded from the definition of facility by the
26 department and the state agency having jurisdiction over the
27 building or structure.

28 (d) The capitol building and grounds. As used in this
29 subdivision, "grounds" means the property ~~upon~~**on** which the ~~state~~

1 ~~capitol building~~ **State Capitol Building** is situated, bordered on
 2 the north by Ottawa ~~street;~~ **Street**, on the east by Capitol ~~avenue;~~
 3 **Avenue**, on the south by Allegan ~~street;~~ **Street**, and on the west by
 4 Walnut ~~street.~~ **Street**.

5 (e) A building or structure owned by, or under the
 6 jurisdiction of, the legislature.

7 (2) "Fiscal agencies" means the senate fiscal agency and the
 8 house fiscal agency.

9 (3) **"Foreign country of concern" means any of the following:**

10 (a) **The People's Republic of China.**

11 (b) **The Russian Federation.**

12 (c) **The Islamic Republic of Iran.**

13 (d) **The Democratic People's Republic of Korea.**

14 (e) **The Republic of Cuba.**

15 (f) **The Venezuelan regime of Nicolás Maduro.**

16 (g) **The Syrian Arab Republic.**

17 (h) **An agency of, or other entity under significant control**
 18 **of, an entity described in subdivisions (a) to (g).**

19 (4) ~~(3)~~ "FTE" means full-time equated position in the
 20 classified service of this state.

21 Sec. 241. (1) Except for the contracts permitted in section
 22 240, a contract ~~shall~~ **must** not be awarded for the construction,
 23 repair, remodeling, or demolition of a facility unless the contract
 24 is let ~~pursuant to~~ **in accordance with** a bidding procedure that is
 25 approved by the board. The department shall issue directives
 26 prescribing procedures to be used to implement this section. The
 27 procedures ~~shall~~ **must** require a competitive solicitation in the
 28 award of any contract for construction, repair, remodeling, or
 29 demolition of a facility.

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

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

19 (4) **Beginning on the effective date of the amendatory act that**
 20 **added this subsection, if a contract awarded under this section**
 21 **will give a contractor access to personal identifying information**
 22 **of any individual, an applicant for the contract must provide the**
 23 **department with an affidavit signed under penalty of perjury**
 24 **attesting that the applicant is not a controlled entity, and the**
 25 **department may not knowingly enter into the contract with a**
 26 **controlled entity.**

27 (5) **Beginning July 1, 2025, the department may not do either**
 28 **of the following:**

29 (a) **Knowingly extend or renew a contract awarded under this**

1 section that gave the contractor access to personal identifying
 2 information of any individual unless the contractor provides the
 3 department with an affidavit signed under penalty of perjury
 4 attesting that the contractor is not a controlled entity.

5 (b) Knowingly extend or renew a contract awarded under this
 6 section that gave the contractor access to personal identifying
 7 information of any individual with a controlled entity.

8 (6) ~~(4)~~—Subject to subsection (3), **and except as otherwise**
 9 **provided by subsection (4)**, for projects funded in whole or in part
 10 with state funds, the construction contract award ~~shall~~**must** be
 11 made to the responsive and responsible best value bidder. As used
 12 in this subsection, "responsive and responsible best value bidder"
 13 means a bidder ~~who~~**that** meets all the following:

14 (a) A bidder ~~who~~**that** complies with all bid specifications and
 15 requirements.

16 (b) A bidder ~~who~~**that** has been determined by the department to
 17 be responsible by the following criteria:

18 (i) The bidder's financial resources.

19 (ii) The bidder's technical capabilities.

20 (iii) The bidder's professional experience.

21 (iv) The bidder's past performance.

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

23 (vi) The bidder's business integrity.

24 (c) A bidder ~~who~~**that** has been selected by the department
 25 through a selection process that evaluates the bid on both price
 26 and qualitative components to determine what is the best value for
 27 this state. Qualitative components may include, but are not limited
 28 to, all of the following:

29 (i) Technical design.

1 (ii) Technical approach.

2 (iii) Quality of proposed personnel.

3 (iv) Management plans.

4 (7) If an applicant or contractor violates subsection (4) or
5 (5), both of the following apply:

6 (a) The applicant or contractor may be ordered to pay a civil
7 fine in an amount that is equal to twice the amount of the applied
8 for or awarded contract.

9 (b) The applicant or contractor may be ineligible to enter
10 into, extend, or renew a contract with the department or a state
11 agency for not more than 5 years, as determined by the department.

12 Sec. 241c. (1) Beginning October 1, 2017, the department or a
13 state agency may not enter into a contract with a person for the
14 construction, alteration, or repair of a state building or other
15 state property unless the contract includes a representation that
16 the person is not currently engaged in, and an agreement that the
17 person ~~will~~**may** not engage in, the boycott of a person based in or
18 doing business with a strategic partner.

19 (2) Beginning on the effective date of the amendatory act that
20 added this subsection, the department or a state agency may not
21 enter into a contract with a person for the construction,
22 alteration, or repair of a state building or other state property
23 unless the contract includes an agreement that the person may not
24 use or provide any information or communication technology or
25 service, equipment, component, network, or system to which any of
26 the following apply:

27 (a) The technology or service, equipment, component, network,
28 or system is identified on the list described in section 272.

29 (b) A federal agency has prohibited, restricted transactions

1 with, restricted the licensing of, or otherwise limited the
2 technology or service, component, network, or system because of a
3 national security concern.

4 (c) The technology or service, equipment, component, network,
5 or system is designed, developed, manufactured, or supplied by a
6 company or affiliate that is owned by, controlled by, or domiciled
7 in a foreign country of concern, as determined by a state or
8 federal agency.

9 (3) ~~(2)~~—As used in this section, "boycott", "person", and
10 "strategic partner" mean those terms as defined in 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~~ **third-party** financing,
14 equipment, printing, and all other items as needed by state
15 agencies for which the legislature has not otherwise expressly
16 provided. If consistent with federal ~~statutes,~~ **law**, in all
17 purchases made by the department, all other things being equal,
18 preference ~~shall~~ **must** be given to products manufactured or services
19 offered by Michigan-based firms or by facilities with respect to
20 which the operator is designated as a clean corporate citizen under
21 part 14 of the natural resources and environmental protection act,
22 1994 PA 451, MCL 324.1401 to 324.1429, or to biobased products
23 whose content is sourced in this state. The department shall
24 solicit competitive bids from the private sector whenever
25 practicable to efficiently and effectively meet the state's needs.
26 The department shall first determine that competitive solicitation
27 of bids in the private sector is not appropriate before using any
28 other procurement method 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 contract with a person to acquire or dispose**
15 **of supplies, services, or information technology unless the**
16 **contract includes an agreement that the person may not use or**
17 **provide any information or communication technology or service,**
18 **equipment, component, network, or system to which any of the**
19 **following apply:**

20 (a) **The technology or service, equipment, component, network,**
21 **or system is identified on the list described in section 272.**

22 (b) **A federal agency has prohibited, restricted transactions**
23 **with, restricted the licensing of, or otherwise limited the**
24 **technology or service, component, network, or system because of a**
25 **national security concern.**

26 (c) **The technology or service, equipment, component, network,**
27 **or system is designed, developed, manufactured, or supplied by a**
28 **company or affiliate that is owned by, controlled by, or domiciled**
29 **in a foreign country of concern, as determined by a state or**

1 federal agency.

2 (14) Beginning on the effective date of the amendatory act
3 that added this subsection, if a contract for the acquisition or
4 disposal of supplies, services, or information technology will give
5 a contractor access to personal identifying information of any
6 individual, an applicant for the contract must provide the
7 department or the state agency with an affidavit signed under
8 penalty of perjury attesting that the applicant is not a controlled
9 entity, and the department or the state agency may not enter into
10 the contract with a controlled entity.

11 (15) Beginning July 1, 2025, the department or a state agency
12 may not do either of the following:

13 (a) Extend or renew a contract for the acquisition or disposal
14 of supplies, services, or information that gave the contractor
15 access to personal identifying information of any individual unless
16 the contractor provides the department or the state agency with an
17 affidavit signed under penalty of perjury attesting that the
18 contractor is not a controlled entity.

19 (b) Extend or renew a contract for the acquisition or disposal
20 of supplies, services, or information technology that gave the
21 contractor access to personal identifying information of any
22 individual with a controlled entity.

23 (16) If an applicant or contractor violates subsection (14) or
24 (15), both of the following apply:

25 (a) The applicant or contractor may be ordered to pay a civil
26 fine in an amount that is equal to twice the amount of the applied
27 for or awarded contract.

28 (b) The applicant or contractor may be ineligible to enter
29 into, extend, or renew a contract with the department or a state

1 **agency for not more than 5 years, as determined by the department.**

2 (17) ~~(13)~~—The following records are exempt from disclosure
3 under the freedom of information act, 1976 PA 442, MCL 15.231 to
4 15.246, as provided in this subsection:

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

9 (b) Records containing a trade secret, as **that term is** defined
10 under section 2 of the uniform trade secrets act, 1998 PA 448, MCL
11 445.1902, or financial or proprietary information submitted in
12 connection with the authority granted under this section.

13 (18) ~~(14)~~—The department shall develop policies and procedures
14 that require all procurement contracts entered into by the
15 department or a state agency, including departments that have
16 delegated procurement authority under this act, to include
17 performance-related liquidated damages or performance targets with
18 incentives in all procurement contracts. The department shall also
19 develop policies and procedures that require the department or
20 state agency to enforce these provisions. Departments or state
21 agencies acting under delegated authority shall inform the
22 department of relevant performance issues. Exceptions to the
23 inclusion or enforcement of performance-related contract provisions
24 may only be granted by the department as provided in a written or
25 electronic record by the department.

26 (19) ~~(15)~~—As used in this section:

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

29 (b) "Boycott" means refusal to have dealings with, divest

1 from, or otherwise engage with a person. Boycott does not include 1
2 or more of the following:

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

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

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

8 (c) "Financial or proprietary information" means information
9 that has not been publicly disseminated or ~~which~~**that** is
10 unavailable from other sources, the release of which might cause
11 the submitter of the information competitive harm.

12 (d) "Person" means any of the following:

13 (i) An individual, corporation, company, limited liability
14 company, business association, partnership, society, trust, or any
15 other nongovernmental entity, organization, or group.

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

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

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

23 (f) "Service-connected disability" means a disability incurred
24 or aggravated in the line of duty in the active military, naval, or
25 air service as described in 38 USC 101(16).

26 (g) "Strategic partner" means a strategic partner described in
27 22 USC 8601 to ~~8606~~**8607**.

28 (h) "Veteran" means an individual who meets both of the
29 following:

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

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

5 **Sec. 272. The department shall issue directives that do all of**
6 **the following:**

7 (a) List the information and communication technologies and
8 services, equipment, components, networks, and systems that pose an
9 undue or unacceptable risk to the safety and security of this
10 state, including because of their connection with or use by a
11 foreign country of concern.

12 (b) Prohibit state agencies from using or providing any
13 information or communication technology or service, equipment,
14 component, network, or system to which any of the following apply:

15 (i) The technology or service, equipment, component, network,
16 or system is identified on the list described in subdivision (a).

17 (ii) A federal agency has prohibited, restricted transactions
18 with, restricted the licensing of, or otherwise limited the
19 technology or service, component, network, or system because of a
20 national security concern.

21 (iii) The technology or service, equipment, component, network,
22 or system is designed, developed, manufactured, or supplied by a
23 company or affiliate that is owned by, controlled by, or domiciled
24 in a foreign country of concern, as determined by a state or
25 federal agency.

26 (c) Establish security procedures to ensure that state
27 information and property are not susceptible to exploitation by a
28 foreign country of concern.