HOUSE BILL NO. 4253

February 26, 2019, Introduced by Reps. Lasinski, Garza, Kennedy, Hoadley, Camilleri, Sowerby, Hertel, Brixie, Manoogian, Hood, Sneller, Love, Warren, Chirkun, Elder, Sabo, Coleman, Wittenberg, Liberati, Hammoud, Tate, Ellison, Gay-Dagnogo, Rabhi, Whitsett and Jones and referred to the Committee on Commerce and Tourism.

A bill to amend 1984 PA 431, entitled

"The management and budget act,"

by amending section 261 (MCL 18.1261), as amended by 2017 PA 21.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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 statutes, in all purchases made by the department, all other things being equal, preference shall 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 designated representative.

(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.

(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 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 be based upon 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) 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.

(14) Beginning October 1, 2019, if the lowest responsive and responsible bidder on a contract described in this section is not a Michigan business, then all bidders on that contract that are Michigan businesses shall have 30 days to resubmit their bids to match or beat the bid from the bidder who is not a Michigan business. If only 1 Michigan business that bid on the contract resubmits a bid under this subsection that matches or beats the successful bid from the bidder who is not a Michigan business, the department shall enter into the contract with that Michigan business. If 2 or more Michigan businesses that bid on the contract resubmit a bid under this subsection that matches or beats the successful bid from the bidder who is not a Michigan business, the department shall enter into the contract with the Michigan business that submitted the lowest responsive and responsible bid as determined by the department. The department shall make all discretionary determinations to implement this subsection. The department shall issue directives to all state agencies to implement this subsection. As used in this subsection, "Michigan business" means that term as defined in section 268.

(15) ~~(14)~~ 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 1 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) "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.

(d) "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*).

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

(f) "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).

(g) "Strategic partner" means a strategic partner described in 22 USC 8601 to 8606.

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

(*i*) Is a veteran as 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.