H.B. NO. <sup>1642</sup> H.D. 1 S.D. 2 C.D. 1

## A BILL FOR AN ACT

RELATING TO THE PURCHASES OF HEALTH AND HUMAN SERVICES.

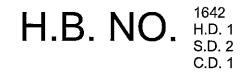
## BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that procurement laws 2 regarding request for proposal procedures for the purchase of 3 health and human services need to be clarified. Recently, the 4 request for proposal for the QUEST Expanded Access contract 5 allowed for-profit organizations intending to bid for health and 6 human services contracts to submit a "pre-tax" bid. The ability 7 to submit a "pre-tax" bid does not apply to not-for-profit 8 companies because not-for-profits are not subject to the 9 insurance premium tax which is mandated by Hawaii law.

In 2008, two for-profit companies bid for, and were 10 awarded, the QUEST Expanded Access Program contracts. 11 In 12 addition, the administration and the department of human 13 services agreed to rebate the amount of the insurance premium 14 tax of 4.265 per cent to these companies, resulting in a higher 15 award amount than the companies had bid. It appears that the 16 state administration, during these difficult financial times, will be "rebating" these companies approximately \$25,000,000 -17



Page 2



funds that the companies will be able to use to pay their taxes.
 Concerned groups have argued that this is not proper, if not
 illegal, because the legislature is the only branch of
 government with the power to impose, waive, or rebate a tax by
 exempting certain types of organizations.

6 Further, under the Hawaii procurement code, a proposed bid 7 should reflect the total amount to be expended by the State on a 8 contract, including all costs and any taxes that may be due and 9 payable. Accordingly, this bill is to ensure transparency in 10 the bidding process.

11 On December 18, 2008, in *Hawaii Insurers Council v. Lingle*, 12 120 Hawai'i 51, 201 P.3d 564 (2008), the Hawaii supreme court 13 held that only the legislature has the power to tax persons or 14 entities. The court further held that "[t]he executive branch 15 is left only with the power to administer and enforce the 16 state's tax laws, not to levy new taxes."

17 The purpose of this Act is to clarify certain award and 18 contract procedures through state procurement laws and the 19 request for proposal process for purchases of health and human 20 services under Chapter 103F, Hawaii Revised Statutes. It 21 further requires bidders to be properly licensed in the state to 22 conduct the business being sought by the request for proposals, HB1642 CD1 HMS 2010-3082



unless the business being sought is not required by the State to
 be licensed.

H.B. NO

3

3 SECTION 2. Chapter 103F, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

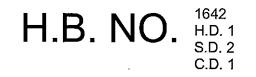
6 "<u>\$103F-</u> Proposals and awards. (a) No contract
7 proposals shall be accepted from any applicant who lacks any
8 license necessary to conduct the business being sought by the
9 request for proposals.

10 (b) Proposals submitted under this chapter shall include all costs, fees, and taxes, and any award or contract shall be 11 for the amount of the proposal. No award or contract shall 12 13 include any other payment, rebate, or direct or indirect 14 consideration that is not included in the proposal, such as insurance premium or general excise tax rebates to or waivers 15 for an applicant or bidder." 16 17 SECTION 3. This Act does not affect rights and duties that

18 matured, penalties that were incurred, and proceedings that were 19 begun, before its effective date.

20 SECTION 4. New statutory material is underscored.
21 SECTION 5. This Act shall take effect upon its approval.





## Report Title:

Purchases of Health and Human Services; Request for Proposals

## Description:

Requires proposals for purchases of health and human services to be submitted by providers licensed to provide the services being bid on. Requires proposals to include all costs, fees, and taxes, including any insurance premium taxes or general excise taxes. Prohibits awards or contracts to include any other payment, rebate, or direct or indirect consideration not included in the proposal. (HB1642 CD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

