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# A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1 PART I

2 SECTION 1. Chapter 103F, Hawaii Revised Statutes, is  
3 amended by adding a new section to part IV to be appropriately  
4 designated and to read as follows:

5 "§103F- Fair and reasonable pricing policy; cost or  
6 pricing data. (a) For each contracting action under this  
7 chapter, including any change orders or contract modifications  
8 that increase the original contract amount, the purchasing  
9 agency shall make a written determination that the amount of the  
10 contracting action is fair and reasonable.

11 (b) In determining whether the amount of the contracting  
12 action is fair and reasonable, the purchasing agency shall  
13 obtain the data necessary to perform a cost or price analysis to  
14 determine that the amount of the contracting action is a fair  
15 and reasonable price."

16 SECTION 2. Section 103D-201, Hawaii Revised Statutes, is  
17 amended by amending subsection (b) to read as follows:



1           "(b) The policy board shall consist of [~~seven~~] six  
2 members. Notwithstanding the limitations of section 78-4, the  
3 members of the board shall include:

4           (1) The comptroller;

5           (2) A county employee with significant high-level  
6 procurement experience; and

7           (3) [~~Five~~] Four persons who shall not otherwise be full-  
8 time employees of the State or any county; provided  
9 that at least one member shall be a [~~certified~~]  
10 professional in the field of procurement, at least one  
11 member shall have significant high-level, federal  
12 procurement experience, at least one member shall have  
13 significant experience in the field of procurement  
14 relating to construction, and at least [~~two members~~  
15 shall have significant experience in the field of  
16 health and human services.] one member shall represent

17 the Hawaii Alliance of Nonprofit Organizations;  
18 Protecting Hawaii's Ohana, Children, Under-Served,  
19 Elderly, and Disabled; or a similar organization.

20 Each appointed member shall have demonstrated sufficient  
21 business or professional experience to discharge the functions



1 of the policy board. The initial and subsequent members of the  
2 policy board, other than the comptroller, shall be appointed by  
3 the governor [~~from a list of three individuals for each vacant~~  
4 ~~position, submitted by a nominating committee composed of four~~  
5 ~~individuals chosen as follows: two persons appointed by the~~  
6 ~~governor; one person appointed by the president of the senate;~~  
7 ~~and one person appointed by the speaker of the house]. Except  
8 as provided in this section, the selection and terms of the  
9 policy board members shall be subject to the requirements of  
10 section 26-34. No member of the policy board shall act  
11 concurrently as a chief procurement officer. The members of the  
12 policy board shall devote such time to their duties as may be  
13 necessary for the proper discharge thereof."~~

14 SECTION 3. Section 103F-404, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 " ~~[+] §103F-404 [.]~~ Treatment purchase of services. (a)  
17 Treatment services may be purchased in accordance with this  
18 section if [~~either or both of~~] the following circumstances are  
19 applicable:



1       ~~[(1) Such services may become necessary from time to time,~~  
2           ~~but cannot be anticipated accurately on an annual or~~  
3           ~~biennial basis; and~~

4       ~~(2) When deferring treatment until solicitation, provider~~  
5           ~~selection, and contract formation can be completed,~~  
6           ~~the problem needing treatment would be rendered worse~~  
7           ~~than at the time of diagnosis or assessment.~~

8       ~~Contracts for treatment services shall be awarded on the basis~~  
9       ~~of demonstrated competence and qualification for the type of~~  
10       ~~service required, and at fair and reasonable prices.~~

11       ~~(b) At a minimum, before the beginning of each fiscal~~  
12       ~~year, the administrator shall publish a notice describing the~~  
13       ~~types of treatment services that may be needed throughout the~~  
14       ~~year on a periodic basis and inviting providers engaged in~~  
15       ~~providing these treatment services to submit current statements~~  
16       ~~of qualification and expressions of interest to the office. The~~  
17       ~~chief procurement officer may specify a uniform format for~~  
18       ~~statements of qualifications.]~~

19       (1) The need for treatment services is unanticipated and  
20       arises from time to time;



1       (2) The required services are for a one-time purchase for  
2           not more than \$100,000 and no longer than one year;

3       (3) The services are industry standard services and are  
4           generally accepted practices by the industry or  
5           profession; and

6       (4) The award of a contract is based on demonstrated  
7           competence and qualification for the type of service  
8           required and at fair and reasonable prices.

9       (b) The head of the purchasing agency, or a designee,  
10       shall, at a minimum, publish a notice describing the types of  
11       treatment services that may be needed throughout the fiscal year  
12       on an as-needed basis and invite providers engaged in providing  
13       these treatment services to submit current statements of  
14       qualification and expressions of interest to the purchasing  
15       agency. Providers may amend these statements by filing an  
16       amended or new statement prior to the date designated for  
17       submission.

18       (c) The [~~administrator~~] head of the purchasing agency  
19       shall form an initial review committee for each profession,  
20       consisting of a minimum of three employees from a state agency  
21       or agencies with sufficient education, training, and licenses or



1 credentials to evaluate the statements of qualifications which  
2 the ~~[administrator]~~ head of the purchasing agency receives in  
3 response to the notice published pursuant to subsection (b).  
4 The committee shall review and evaluate the submissions and  
5 other pertinent information, including references and reports,  
6 and prepare a list of qualified providers to provide treatment  
7 services during the fiscal year. Providers included on the list  
8 of qualified treatment providers may amend their statements of  
9 qualifications as necessary or appropriate. Providers shall  
10 immediately inform the ~~[administrator]~~ head of the purchasing  
11 agency of any changes in information furnished ~~[which]~~ that  
12 would disqualify the provider from being considered for a  
13 contract award.

14 (d) When the need to purchase treatment services arises,  
15 the head of a purchasing agency shall select the provider most  
16 qualified to provide the needed treatment from the list of  
17 qualified providers.

18 (e) The head of the purchasing agency, or a designee,  
19 shall negotiate a contract, including a rate of compensation  
20 ~~[which]~~ that is fair and reasonable, established in writing, and  
21 based upon the estimated value, scope, nature, and complexity of



1 the treatment services to be rendered, or use the rate  
2 established by the [~~administrator,~~] head of the purchasing  
3 agency, if any. If negotiations fail, upon written notice of an  
4 impasse to the provider selected under subsection (d), the head  
5 of the purchasing agency shall choose another provider from the  
6 list of qualified providers, and conduct further negotiations.  
7 Negotiations shall be conducted confidentially.

8 (f) Contracts for treatment services in excess of \$100,000  
9 or that last for more than one year shall [~~be procured using~~  
10 ~~section 103F-402, competitive purchase of services, unless a~~  
11 ~~waiver of this subsection is approved by the chief procurement~~  
12 ~~officer.~~] utilize an applicable method of procurement."

13 SECTION 4. Section 103F-405, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "[~~+~~] **§103F-405 [~~+~~]** **Small purchases.** Purchases of health and  
16 human services of less than [~~\$25,000~~] \$100,000 are small  
17 purchases, and shall be made in accordance with [~~section 103D-~~  
18 ~~305 and~~] rules adopted by the policy board to implement [~~that~~]  
19 this section."

20 SECTION 5. Section 103F-202, Hawaii Revised Statutes, is  
21 repealed.



1           ~~["§103F-202] Community council. (a) There is~~  
2   ~~established a community council on purchase of health and human~~  
3   ~~services. The community council shall be comprised of no more~~  
4   ~~than nine voting members, and one non-voting, ex-officio member~~  
5   ~~of the interagency committee on purchase of health or human~~  
6   ~~services designated by the majority of the members of the~~  
7   ~~committee. There shall be a member from each county, except the~~  
8   ~~county of Kalawao, and up to five members interested in health,~~  
9   ~~human services, employment, or the provision of services to~~  
10 ~~children and youth.~~

11           ~~(b) Voting members shall be appointed by the governor and~~  
12 ~~serve for four years. Each voting member shall serve until the~~  
13 ~~member's successor is appointed. Section 26-34 shall apply~~  
14 ~~insofar as it relates to the number of terms and consecutive~~  
15 ~~number of years a member may serve on the council.~~

16           ~~(c) Members shall serve without compensation, but shall be~~  
17 ~~reimbursed for actual expenses, including travel expenses,~~  
18 ~~necessary for the performance of their duties.~~

19           ~~(d) The community council shall advise the administrator~~  
20 ~~about or assist the administrator in:~~

21           ~~(1) Market or business conditions facing providers;~~



- 1       ~~(2) Securing input from providers to facilitate agency~~  
2           ~~decision-making to assess needs, plan, budget, and~~  
3           ~~purchase health and human services;~~
- 4       ~~(3) Facilitating provider participation in the process~~  
5           ~~used by state agencies to plan for and purchase health~~  
6           ~~and human services;~~
- 7       ~~(4) Establishing schedules for planning and purchasing~~  
8           ~~health and human services in relation to the annual~~  
9           ~~and biennial budget cycles;~~
- 10       ~~(5) Developing criteria to evaluate proposals to provide~~  
11           ~~health and human services, and for restrictive~~  
12           ~~purchases under section 103F 403; and~~
- 13       ~~(6) The needs of purchasing agencies and providers for~~  
14           ~~education and training to improve planning for or~~  
15           ~~purchasing of health and human services." ]~~

## PART II

17       SECTION 6. The legislature finds that under the State's  
18 procurement code, an aggrieved party, that submitted a bid for a  
19 state project that was not awarded the bid, may protest the bid  
20 award. The legislature further finds that procurement protest  
21 review can be lengthy, causing project delays, thereby



1 increasing project costs that are borne by taxpayers. Thus, it  
2 is imperative that the review process for protests be completed  
3 in a timely manner to reduce the cost of state projects.

4 Establishing a deadline for bid protests to be reviewed and  
5 resolved would expedite the protest review process and reduce  
6 the cost associated with state-awarded projects.

7 The purpose of this part is to create time limits to  
8 resolve protests to the awards of major construction projects to  
9 prevent costly delays and major negative impacts on future state  
10 infrastructure enhancements.

11 SECTION 7. Section 103D-701, Hawaii Revised Statutes, is  
12 amended by amending subsection (c) to read as follows:

13 "(c) The chief procurement officer or a designee shall  
14 resolve any protest as expeditiously as possible. If the  
15 protest is not resolved by mutual agreement, the chief  
16 procurement officer or a designee shall [~~promptly~~] issue a  
17 written decision [~~in writing~~] to uphold or deny the protest.

18 The decision shall:

19 (1) State the reasons for the action taken; and





**Report Title:**

Procurement; Purchase of Health and Human Services; Procurement Policy Board; Treatment Services; Community Council

**Description:**

Requires purchasing agencies to make a written determination that the amount of a contracting action for purchases of health and human services is fair and reasonable. Amends the selection process and composition of the procurement policy board. Amends the circumstances for when treatment services may be purchased and the procedure to purchase such services. Increases the small purchase threshold. Repeals the establishment of the community council on purchase of health and human services. Requires the chief procurement officer to expeditiously resolve any protest. Creates time limits to resolve protests to the awards of major construction projects valued at or above three million dollars. Effective 7/1/2112. (SD2)

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

