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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, and at least [~~two members~~  
13 ~~shall have significant experience in the field of~~  
14 ~~health and human services.~~] one member shall represent  
15 the Hawaii Alliance of Nonprofit Organizations;  
16 Protecting Hawaii's Ohana, Children, Under-Served,  
17 Elderly, and Disabled; or a similar organization.

18 Each appointed member shall have demonstrated sufficient  
19 business or professional experience to discharge the functions  
20 of the policy board. The initial and subsequent members of the  
21 policy board, other than the comptroller, shall be appointed by



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

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

15 "~~{}~~§103F-404~~}~~ Treatment purchase of services. (a)  
16 Treatment services may be purchased in accordance with this  
17 section if [~~either or both of~~] the following circumstances are  
18 applicable:

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



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

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

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

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

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



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

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

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

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



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

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

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



1 agency, if any. If negotiations fail, upon written notice of an  
2 impasse to the provider selected under subsection (d), the head  
3 of the purchasing agency shall choose another provider from the  
4 list of qualified providers, and conduct further negotiations.  
5 Negotiations shall be conducted confidentially.

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

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

13 "[~~§~~103F-405~~]~~ **Small purchases.** Purchases of health and  
14 human services of less than [~~\$25,000~~] \$100,000 are small  
15 purchases, and shall be made in accordance with [~~section 103D-~~  
16 ~~305 and~~] rules adopted by the policy board to implement [~~that~~]  
17 this section."

18 SECTION 5. Section 103F-202, Hawaii Revised Statutes, is  
19 repealed.

20 [~~§103F-202~~] ~~Community council.~~ (a) ~~There is~~  
21 ~~established a community council on purchase of health and human~~



1 ~~services. The community council shall be comprised of no more~~  
2 ~~than nine voting members, and one non voting, ex officio member~~  
3 ~~of the interagency committee on purchase of health or human~~  
4 ~~services designated by the majority of the members of the~~  
5 ~~committee. There shall be a member from each county, except the~~  
6 ~~county of Kalawao, and up to five members interested in health,~~  
7 ~~human services, employment, or the provision of services to~~  
8 ~~children and youth.~~

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

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

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

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





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 competitive sealed proposal  
9 contracts and procurements of professional services.

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

12 "(c) The chief procurement officer or a designee shall  
13 resolve any protest as expeditiously as possible. If the  
14 protest is not resolved by mutual agreement, the chief  
15 procurement officer or a designee shall [~~promptly~~] issue a  
16 written decision [~~in writing~~] to uphold or deny the protest[-]  
17 within seventy-five calendar days of receipt of the protest;  
18 unless extenuating circumstances require additional time, which  
19 shall not exceed an additional thirty calendar days. The  
20 decision shall:

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



1 (2) Inform the protestor of the protestor's right to an  
2 administrative proceeding as provided in this part, if  
3 applicable."

4 PART III

5 SECTION 8. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7 SECTION 9. This Act shall take effect on July 1, 2112.



**Report Title:**

Procurement; Purchase of Health and Human Services; Procurement Policy Board; Treatment Services; Community Council; Procurement Protests; Resolution; Chief Procurement Officer; Time Limit

**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 or designee to address protests as expeditiously as possible. Creates time limits to resolve protests to the awards of competitive sealed proposal contracts and procurements of professional services. Effective 7/1/2112.  
(Proposed SD2)

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

