

JAN 26 2022

A BILL FOR AN ACT

RELATING TO PURCHASES OF HEALTH AND HUMAN SERVICES.

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

1 SECTION 1. The purpose of this Act is to amend the
2 procurement laws relating to purchases of health and human
3 services to promote procurement efficiency, program success, and
4 government accountability. It would (1) promote fair and
5 reasonable costs or prices by requiring an agency purchasing
6 health and human services to analyze a proposed cost or price
7 and to document the agency's determination that such cost or
8 price is fair and reasonable; (2) increase the small purchase
9 threshold for health and human services and authorize the
10 procurement policy board to adopt administrative rules to
11 provide an expedited method for purchasing agencies to
12 competitively procure health and human services small purchases;
13 (3) increase efficiency of short-term treatment purchase of
14 services; and (4) abolish the community council on purchase of
15 health and human services.

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

4 "§103F- Fair and reasonable pricing policy; cost or pricing
5 data. (a) A procurement officer shall purchase services for
6 health and human services from responsible sources at fair and
7 reasonable prices. A procurement officer shall make a written
8 determination whether a cost or price is fair and reasonable for
9 each contracting action that results in the purchase of health
10 and human services, including change orders and contract
11 modifications that adjust prices. In establishing whether a
12 cost or price is fair and reasonable, the procurement officer
13 shall obtain:

- 14 (1) Certified cost or pricing data for every contract to
15 which subsection (c) applies; and
16 (2) Other data as necessary to perform a cost or price
17 analysis of the data and determine a fair and
18 reasonable cost or price, regardless of whether
19 subsection (c) applies to the contract.

20 (b) The policy board may adopt rules, pursuant to chapter
21 91, to establish an order of preference in the type of data
22 required under subsection (a) (2).

1 (c) A provider, except as provided in subsection (e),
2 shall submit cost or pricing data and shall certify that, to the
3 best of the provider's knowledge and belief, the cost or pricing
4 data submitted is accurate, complete, and current as of a
5 mutually determined specified date before the date of:

6 (1) The pricing of any contract awarded by competitive
7 sealed proposals or pursuant to the restrictive
8 purchase authority, where the total contract amount is
9 expected to exceed an amount established by rules
10 adopted by the policy board; or

11 (2) The cost or pricing of any change order or contract
12 modification that is expected to exceed an amount
13 established by rules adopted by the policy board. The
14 requirement of this paragraph shall apply regardless
15 of whether the original contract award did not require
16 certified cost and pricing data.

17 (d) Any contract, change order, or contract modification
18 under which a certificate is required shall contain a provision
19 that the cost or price to the State, including profit or fee,
20 shall be adjusted to exclude any significant sums by which the
21 State finds that the cost or price was increased because the
22 provider furnished cost or pricing data that was inaccurate,

1 incomplete, or not current as of the date agreed upon between
2 the parties.

3 (e) The requirements of this section shall not apply to
4 original contract awards:

5 (1) Where the original contract price is based on adequate
6 price competition;

7 (2) Where the original contract price is based on
8 established catalog prices or market prices;

9 (3) Where the original contract price is set by law or
10 rules; or

11 (4) Where it is determined in writing in accordance with
12 rules adopted by the policy board that the
13 requirements of this section may be waived, and the
14 reasons for the waiver are stated in writing; provided
15 that the requirements for cost or pricing data
16 required under subsection (a) (2) shall not be waived
17 without the approval of the chief procurement officer;
18 provided further that the chief procurement officer
19 shall not delegate this authority.

20 SECTION 3. Section 103F-102, Hawaii Revised Statutes, is
21 amended by adding a new definition to be appropriately inserted
22 and to read as follows:

1 "Policy board" has the same meaning as in section 103D-
2 104."

3 SECTION 4. Section 103F-404, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[~~§~~103F-404[~~§~~] Treatment purchase of services. (a)

6 Treatment services may be purchased in accordance with this
7 section if [~~either or both~~] any or all of the following
8 circumstances are applicable:

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

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

16 ~~Contracts for treatment services shall be awarded on the basis~~
17 ~~of demonstrated competence and qualification for the type of~~
18 ~~service required, and at fair and reasonable prices.]~~

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

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

1 (3) The services are industry standard services, that is,
2 the services are generally accepted practices by the
3 industry or profession.

4 (b) At a minimum, before the beginning of each fiscal
5 year, the ~~[administrator]~~ head of the purchasing agency, or a
6 designee, shall publish a notice describing the types of
7 treatment services that may be needed throughout the fiscal year
8 on ~~[a periodic]~~ an as-needed basis and inviting providers
9 engaged in providing these treatment services to submit current
10 statements of qualification and expressions of interest to the
11 ~~[office. The chief procurement officer may specify a uniform~~
12 ~~format for statements of qualifications.]~~ head of the purchasing
13 agency, or a designee. Providers may amend these statements by
14 filing an amended or new statement prior to the date designated
15 for 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 that the [administrator] head of the purchasing agency, or a
22 designee receives in response to the notice published pursuant
23 to subsection (b). The committee shall review and evaluate the

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

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

14 (e) The head of the purchasing agency, or a designee,
15 shall negotiate a contract, including a rate of compensation
16 ~~which~~ that is fair and reasonable, established in writing, and
17 based upon the estimated value, scope, nature, and complexity of
18 the treatment services to be rendered, or use the rate
19 established by the ~~administrator,~~ head of the purchasing
20 agency, if any. If negotiations fail, upon written notice of an
21 impasse to the provider selected under subsection (d), the head
22 of the purchasing agency shall choose another provider from the

1 list of qualified providers, and conduct further negotiations.
2 Negotiations shall be conducted confidentially.

3 (f) Contracts for treatment services in excess of \$100,000
4 or that last for more than one year shall [~~be procured using~~
5 ~~section 103F-402, competitive purchase of services, unless a~~
6 ~~waiver of this subsection is approved by the chief procurement~~
7 ~~officer.~~] utilize an alternative applicable method of
8 procurement pursuant to section 103F-401."

9 SECTION 5. Section 103F-405, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "[~~§~~103F-405[~~]~~] **Small purchases.** Purchases of health and
12 human services of less than [~~\$25,000~~] \$100,000 are small
13 purchases, and shall be made in accordance with [~~section 103D-~~
14 ~~305 and~~] rules adopted by the policy board to implement [~~that~~
15 this section."

16 SECTION 6. Section 103F-202, Hawaii Revised Statutes, is
17 repealed.

18 [~~§~~103F-202] ~~Community council.~~ (a) ~~There is~~
19 ~~established a community council on purchase of health and human~~
20 ~~services. The community council shall be comprised of no more~~
21 ~~than nine voting members, and one non-voting, ex officio member~~
22 ~~of the interagency committee on purchase of health or human~~
23 ~~services designated by the majority of the members of the~~

1 ~~committee. There shall be a member from each county, except the~~
2 ~~county of Kalawao, and up to five members interested in health,~~
3 ~~human services, employment, or the provision of services to~~
4 ~~children and youth.~~

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

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

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

- 15 ~~(1) Market or business conditions facing providers;~~
- 16 ~~(2) Securing input from providers to facilitate agency~~
17 ~~decision making to assess needs, plan, budget, and~~
18 ~~purchase health and human services;~~
- 19 ~~(3) Facilitating provider participation in the process~~
20 ~~used by state agencies to plan for and purchase health~~
21 ~~and human services;~~
- 22 ~~(4) Establishing schedules for planning and purchasing~~
23 ~~health and human services in relation to the annual~~

Report Title:

Procurement; Price or Cost Data; Small Purchase of Service;
Treatment Purchase of Services; Community Council

Description:

Requires cost or pricing analysis for purchases of health and human services. Adds definition of "policy board." Increases the small purchase threshold for purchases of health and human services. Authorizes heads of purchasing agencies to issue requests for statement of qualifications and to establish lists of qualified providers for treatment purchase of services. Abolishes the Community Council for health and human services.

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

JUSTIFICATION SHEET

SB. NO. 3039

DEPARTMENT: Accounting and General Services.

TITLE: A BILL FOR AN ACT RELATING TO PURCHASES OF HEALTH AND HUMAN SERVICES.

PURPOSE: To require agencies purchasing health and human services to analyze proposed costs or prices and to document the agency's determination that such costs or prices are fair and reasonable; add "policy board" to definitions section; authorize the head of the purchasing agency, rather than the administrator of the State procurement office, to oversee the treatment purchase of service process; increase the small purchase threshold for health and human services from \$25,000 to \$100,000 and delete the reference to follow section 103D-305, Hawaii Revised Statutes (HRS); and abolish the community council on purchase of health and human services.

MEANS: Add a new section to part IV of chapter 103F, HRS. Amend sections 103F-102, 103F-404 and 103F-405, HRS. Repeal section 103F-202, HRS.

JUSTIFICATION: Section 2 of this bill is intended to ensure agencies purchasing health and human services are promoting government transparency and accountability. Agencies subject to chapter 103F, HRS, should award contracts at fair and reasonable costs or prices, and make and document a written determination in the contract file that the costs or prices are fair and reasonable.

Impact on the public: Requiring that the procurement officer obtain certified cost or pricing data or other data as necessary for the State to determine if a proposed cost or price is fair and reasonable would ensure

that taxpayers' dollars are spent efficiently and effectively.

Impact on the department and other agencies:
Purchasing agencies of health and human services would be required to analyze a proposed cost or price and determine if the cost or price is fair and reasonable.

Section 4 of this bill provides purchasing agencies with the treatment purchase of service method of procurement for purchasing health and human services that (1) are sporadically used and (2) cannot be anticipated accurately on an annual basis. The treatment purchase of service method of procurement is intended to be used on a one-time, short-term basis. As each department and chief procurement officer jurisdiction may have unanticipated, short-term requirements specific for its service needs, it is in the best interest of the State to allow each department to establish its own lists of qualified providers and use the treatment purchase of service method of procurement for purchasing health and human services.

Impact on the public: The public would benefit from getting expedited services for specific needs.

Impact on the department and other agencies:
The agencies would have the ability to establish and use lists of qualified providers, as needed specifically for the provision of health and human services.

Section 5 of this bill provides purchasing agencies an expedited way to competitively procure health and human services valued at less than \$100,000. The statute currently requires purchasing agencies to follow the small purchase procedures in accordance with section 103D-305, HRS.

In 2009, the small purchase threshold for chapter 103D procurements was raised from

\$50,000 to \$100,000 for goods or services, and \$250,000 for construction. The small purchase threshold for health and human services has remained unchanged at \$25,000.

Increasing the small purchase threshold to \$100,000 for health and human services procurements would reduce administrative costs to the State and provider community, freeing up scarce contracting workforce resources to execute complex high-dollar value procurements. Increasing the small purchase threshold will achieve greater speed and efficiency and align with practices under chapter 103D, HRS.

Impact on the public: The amendment would clarify the small purchase procedures specifically for procurement of health and human services and reduce administrative costs on health and human services providers.

Impact on the department and other agencies: The amendment would increase speed and efficiency of small purchase procurement of health and human services and reduce administrative costs of agencies.

Section 6 of this bill abolishes the community council on purchase of health and human services. Chapter 103F, HRS, was enacted in 1997 to implement a procurement code for health and human services. The community council, established in 1997 under section 103F-202, HRS, provided input and assistance to the State procurement administrator to develop the rules, infrastructure, and procedures for procuring health and human services. The community council was also valuable in assisting the development of the health and human services procurement conferences, held biennially. The community council is an advisory body with no voting rights.

More than 20 years after the establishment of the council, the focus of health and

human service procurements has changed. The rules are well-established, and both providers and purchasing agencies are acclimated to the process.

The last meeting of the council was held on April 22, 2010. Thereafter, lack of quorum and lack of governor-appointed members prevented further meetings per statutory requirements. With the economic downturn at the time, potential members found that they could not spare the time away from their businesses. In a few cases, potential members served on other boards, thereby prohibiting them from serving on the community council.

The State procurement office believes that State agencies and private providers communicating and working together in a dynamic paradigm, can refine and update procedures for planning, procuring, and contracting health and human services to meet today's needs. Furthermore, the health and human services sectors each have a designated position on the procurement policy board, pursuant to section 103D-201, HRS, which has the authority and responsibility to adopt rules pursuant to section 103D-202, HRS.

Impact on the public: None.

Impact on the department and other agencies:
None.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: All agencies procuring health and human services pursuant to chapter 103F, HRS.

EFFECTIVE DATE: Upon approval.

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