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# 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 by:

5           (1) Requiring fair and reasonable costs or prices by  
6               requiring an agency purchasing health and human  
7               services to analyze a proposed cost or price and to  
8               document the agency's determination that such cost or  
9               price is fair and reasonable;

10          (2) Increasing the small purchase threshold for health and  
11               human services and authorizing the procurement policy  
12               board to adopt administrative rules to provide an  
13               expedited method for purchasing agencies to  
14               competitively procure health and human services small  
15               purchases;

16          (3) Increasing efficiency of short-term treatment purchase  
17               of services; and



(4) Abolishing the community council on purchase of health and human services.

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

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

(1) Certified cost or pricing data for every contract to which subsection (c) applies; and

(2) Other data as necessary to perform a cost or price analysis of the data and determine a fair and reasonable cost or price, regardless of whether subsection (c) applies to the contract.



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

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

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

14       (2) The cost or pricing of any change order or contract  
15       modification that is expected to exceed an amount  
16       established by rules adopted by the policy board.

17       This paragraph shall apply regardless of whether the  
18       original contract award did not require certified cost  
19       and pricing data.

20       (d) Any contract, change order, or contract modification  
21       under which a certificate is required shall contain a provision



1 that the cost or price to the State, including profit or fee,  
2 shall be adjusted to exclude any significant sums by which the  
3 State finds that the cost or price was increased because the  
4 provider furnished cost or pricing data that was inaccurate,  
5 incomplete, or not current as of the date agreed upon between  
6 the parties.

7 (e) This section shall not apply to original contract  
8 awards where:

9 (1) The original contract price is based on adequate price  
10 competition;

11 (2) The original contract price is based on established  
12 catalog prices or market prices;

13 (3) The original contract price is set by law or rules; or

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



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

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

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

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

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

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

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



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

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

6       (3) The services are industry standard services, meaning  
7       the services are generally accepted practices by the  
8       industry or profession.

9       (b) At a minimum, before the beginning of each fiscal  
10      year, the ~~[administrator]~~ head of the purchasing agency, or a  
11      designee, shall publish a notice describing the types of  
12      treatment services that may be needed throughout the fiscal year  
13      on ~~[a periodic]~~ an as-needed basis and inviting providers  
14      engaged in providing these treatment services to submit current  
15      statements of qualification and expressions of interest to the  
16      ~~[office. The chief procurement officer may specify a uniform~~  
17      ~~format for statements of qualifications.]~~ head of the purchasing  
18      agency, or a designee. Providers may amend these statements by  
19      filing an amended or new statement prior to the date designated  
20      for submission.



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

18           (d) When the need to purchase treatment arises, the head  
19 of a purchasing agency shall select the provider most qualified  
20 to provide the needed treatment from the list of qualified  
21 providers.



(e) The head of the purchasing agency, or a designee, shall negotiate a contract, including a rate of compensation ~~[which]~~ that is fair and reasonable, established in writing, and based upon the estimated value, scope, nature, and complexity of the treatment services to be rendered, or use the rate established by the ~~[administrator,]~~ head of the purchasing agency, if any. If negotiations fail, upon written notice of an impasse to the provider selected under subsection (d), the head of the purchasing agency shall choose another provider from the list of qualified providers, and conduct further negotiations. Negotiations shall be conducted confidentially.

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

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

"~~[§]103F-405[§]~~ **Small purchases.** Purchases of health and human services of less than ~~[\$25,000]~~ \$100,000 are small





1 purchases, and shall be made in accordance with [~~section 103D-~~  
2 ~~305 and~~] rules adopted by the policy board to implement [~~that~~]  
3 this section."

4 SECTION 6. Section 103F-202, Hawaii Revised Statutes, is  
5 repealed.

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

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



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

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

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

7           ~~(2) Securing input from providers to facilitate agency~~  
8           ~~decision making to assess needs, plan, budget, and~~  
9           ~~purchase health and human services;~~

10          ~~(3) Facilitating provider participation in the process~~  
11          ~~used by state agencies to plan for and purchase health~~  
12          ~~and human services;~~

13          ~~(4) Establishing schedules for planning and purchasing~~  
14          ~~health and human services in relation to the annual~~  
15          ~~and biennial budget cycles;~~

16          ~~(5) Developing criteria to evaluate proposals to provide~~  
17          ~~health and human services, and for restrictive~~  
18          ~~purchases under section 103F-403; and~~

19          ~~(6) The needs of purchasing agencies and providers for~~  
20          ~~education and training to improve planning for or~~  
21          ~~purchasing of health and human services." ]~~



1       SECTION 7. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3       SECTION 8. This Act shall take effect on July 1, 2050.



**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. Effective 7/1/2050. (SD1)

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