

ACT 69

H.B. NO. 1642

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:

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

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

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

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

The purpose of this Act is to clarify certain award and contract procedures through state procurement laws and the request for proposal process

for purchases of health and human services under Chapter 103F, Hawaii Revised Statutes. It further requires bidders to be properly licensed in the state to conduct the business being sought by the request for proposals, unless the business being sought is not required by the State to be licensed.

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

“§103F- Proposals and awards. (a) No contract proposals shall be accepted from any applicant who lacks any license necessary to conduct the business being sought by the request for proposals.

(b) Proposals submitted under this chapter shall include all costs, fees, and taxes, and any award or contract shall be for the amount of the proposal. No award or contract shall include any other payment, rebate, or direct or indirect consideration that is not included in the proposal, such as insurance premium or general excise tax rebates to or waivers for an applicant or bidder.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Vetoed by Governor and veto overridden by Legislature on April 29, 2010.)

Note

1. Edited pursuant to HRS §23G-16.5.