

S .B. NO. 2838

JAN 23 2020

A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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 the purchase of health and human
3 services to promote procurement efficiency, program success, and
4 government accountability. It would do so by (1) authorizing
5 the procurement policy board to adopt administrative rules to
6 provide an expedited method for purchasing agencies to
7 competitively procure health and human services small purchases,
8 (2)# increasing efficiency and short-term treatment purchase of
9 services, (3) promoting fair and reasonable prices through
10 government transparency and accountability, and (4) streamlining
11 membership requirements for the procurement policy board.

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

15

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1 "§103F- Fair and reasonable pricing policy; cost or pricing
2 data.

3 (a) For each contracting action under this chapter including
4 any change orders or contract modifications that increase the
5 original contract amount, the procuring agency shall make a
6 written determination that the amount of the contracting action
7 is fair and reasonable.

8 (b) In determining whether the amount of the contracting action
9 is fair and reasonable, the procuring agency shall obtain the
10 following:

11 (1) Cost or pricing data, certified by the contractor
12 pursuant to subsection (c), supporting the amount of
13 the contracting actions, and

14 (2) Other data necessary to perform a cost or price
15 analysis to determine that the amount of the
16 contracting action is a fair and reasonable price.

17 (c) Contractor shall submit to the procuring agency cost or
18 pricing data supporting the amount of the contracting action and
19 shall certify that the submitted data is accurate, complete, and
20 current when the contractor submits the offer or, if the
21 contracting action is a change order or contract modification

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1 increasing the total contract amount, prior to the execution of
2 such change order or contract modification.

3 (d) If the procuring agency finds that the contractor
4 furnished cost or pricing data that was inaccurate, incomplete,
5 or not current, the procuring agency may adjust the amount of
6 the contract, change order, or contract modification to reflect
7 an amount that is supported by accurate, complete, and current
8 cost or pricing data obtained by the procuring agency.

9 (e) Subsection (b)(1) shall not apply to:

- 10 (1) Contract awards based on adequate price competition;
11 (2) Contract awards where the contract price is based upon
12 established catalog or market prices;
13 (3) Contract awards where the contract price is set by law
14 or administrative rule;
15 (4) Contract awards for small purchases pursuant to
16 section 103F-403, except for change orders and change
17 modifications that increase an original small purchase
18 contract to an amount beyond the threshold amount set
19 forth in section 103F-403; and
20 (5) Contracting actions that, in accordance with rules
21 adopted by the procurement policy board, may be waived
22 by the chief procurement officer from the

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1 requirements of this section; provided that the
2 reasons for such waiver are in writing; and provided
3 further that the chief procurement officer shall not
4 delegate this authority."

5 SECTION 3. Section 103D-201, Hawaii Revised Statutes, is
6 amended by amending subsection (b) to read as follows:

7 "(b) The policy board shall consist of [~~seven~~] six members.

8 Notwithstanding the limitations of section 78-4, the members of
9 the board shall include:

10 (1) The comptroller;

11 (2) A county employee with significant high-level
12 procurement experience; and

13 (3) [~~Five~~] Four persons who shall not otherwise be full-
14 time employees of the State or any county; provided
15 that at least one member shall be a [~~certified~~]
16 professional in the field of procurement, at least one
17 member shall have significant high-level, federal
18 procurement experience, and at least [~~two members~~] one
19 member shall have significant experience in the field
20 of health and human services.

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

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

14 SECTION 4. 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:

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

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

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

12 (3) The services are industry standard services, that is,
13 the services are generally accepted practices by the
14 industry or profession; and

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

18 ~~(b) [At a minimum, before the beginning of each fiscal~~
19 ~~year, the administrator shall publish a notice describing the~~
20 ~~types of treatment services that may be needed throughout the~~
21 ~~year on a periodic basis and inviting providers engaged in~~
22 ~~providing these treatment services to submit current statements~~

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1 ~~of qualification and expressions of interest to the office. The~~
2 ~~chief procurement officer may specify a uniform format for~~
3 ~~statements of qualifications.]~~ The head of the purchasing
4 agency shall, at a minimum, publish a notice describing the
5 types of treatment services that may be needed throughout the
6 year on an as-needed basis and inviting providers engaged in
7 providing these treatment services to submit current statements
8 of qualification and expressions of interest to the purchasing
9 agency. Providers may amend these statements by filing an
10 amended or new statement prior to the date designated for
11 submission.

12 (c) The [~~administrator~~] head of the purchasing agency
13 shall form an initial review committee for each profession,
14 consisting of a minimum of three employees from a state agency
15 or agencies with sufficient education, training, and licenses or
16 credentials to evaluate the statements of qualifications which
17 the [~~administrator~~] head of the purchasing agency receives in
18 response to the notice published pursuant to subsection (b).
19 The committee shall review and evaluate the submissions and
20 other pertinent information, including references and reports,
21 and prepare a list of qualified providers to provide treatment
22 services during the fiscal year. Providers included on the list

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1 of qualified treatment providers may amend their statements of
2 qualifications as necessary or appropriate. Providers shall
3 immediately inform the [~~administrator~~] head of the purchasing
4 agency of any changes in information furnished [~~which~~] that
5 would disqualify the provider from being considered for a
6 contract award.

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

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

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


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

9 "[~~§~~103F-405[~~]~~] **Small purchases.** Purchases of health and
10 human services of less than [~~\$25,000~~] \$100,000 are small
11 purchases, and shall be made in accordance with [~~section 103D-~~
12 ~~305 and~~] rules adopted by the policy board to implement [~~that~~]
13 this section."

14 SECTION 6. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 7. This Act shall take effect upon its approval.

INTRODUCED BY:



BY REQUEST

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Report Title:

Procurement; Price or Cost Data; Procurement Policy Board;
Treatment Purchase of Services; Small Purchase of Service

Description:

Requires cost or pricing analysis for health and human services purchasing. Changes membership of the Procurement Policy Board. Authorizes purchasing agency heads to issue requests for statement of qualifications and to establish lists of qualified providers for treatment purchase of services. Increases the small purchase threshold 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.

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JUSTIFICATION SHEET

DEPARTMENT: Accounting and General Services.

TITLE: A BILL FOR AN ACT RELATING TO PROCUREMENT.

PURPOSE: To require agencies purchasing health and human services to analyze proposed costs and prices and to document the agency's determination that such costs and prices are fair and reasonable. This bill also would reduce the procurement policy board from seven to six members. This bill also revises the treatment purchase of service section to authorize the head of the procuring agency, rather than the administrator of the State Procurement Office, to oversee the treatment purchase of service process. Finally, this bill increases the small purchase threshold for health and human services from \$25,000 to \$100,000 and deletes the reference to follow section 103D-305, Hawaii Revised Statutes (HRS).

MEANS: Add a new section to part IV of chapter 103F and amend sections 103D-201(b), 103F-404, and 103F-405, HRS.

JUSTIFICATION: Section 2 of this bill is intended to ensure purchasing agencies are executing their fiduciary duties to the taxpayers, promoting government transparency and accountability. Agencies subject to chapters 103D and 103F, HRS, should award contracts at fair and reasonable prices and the written determination that the costs or prices are fair and reasonable should be documented in the contract file.

Impact on the public: Protects fiduciary taxpayers' dollars. Requires that state Contractors provide certified cost or pricing data or other data as necessary for the state to perform a cost or price

analysis and determine if a proposed price is fair and reasonable price.

Impact on the department and other agencies:
Establishes requirements for purchasing agencies to analyze proposed prices or cost and determine if a price is fair and reasonable price.

Section 3 of this bill seeks to promote procurement efficiency, program success, and government accountability by creating a more responsive state procurement policy board by streamlining Procurement Policy Board membership requirements. It remains difficult to attract potential procurement policy board candidates for the nominating process. Since 2014, thirty-three percent (33%) of all regularly scheduled procurement policy board meetings have been canceled, due to lack of quorum, resulting in less than three procurement policy board meetings per year. These two issues result in a procurement policy board that frequently does not have a quorum and therefore increases the time taken to promulgate rules. Streamlining the procurement policy board nominating process by reducing the number of members and candidates will improve ability to get quorum and promulgate rules.

Impact on the public: A more responsive and agile procurement policy board.

Impact on the department and other agencies:
None.

Section 4 of this bill provides purchasing agencies an alternative to competitively procuring for health and human services that (1) are sporadically used and (2) cannot be anticipated accurately on an annual basis. Treatment Purchase of Service method of procurement is intended to be used on a one-time, short-term basis. Due to its restrictive nature, the treatment method of procurement has limited usage since other

methods can generally satisfy the requirement. 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, when applicable.

Impact on the public: Expedited services for specific needs.

Impact on the department and other agencies: 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 less than \$25,000. 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 cost 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 chapter 103D practices.

Impact on the public: Clarifies the small purchase procedures specifically for procurement of health and human services.

Reduces administrative cost on health and human services providers.

Impact on the department and other agencies:
Clarifies the small purchase procedures specifically for procurement of health and human services. Increased speed and efficiency and reduced administrative costs.

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.