
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:

1 SECTION 1. The legislature finds that procurement laws
2 regarding request for proposal procedures for the purchase of
3 health and human services need to be clarified. Currently, the
4 request for proposal procedure allows for-profit organizations
5 intending to bid for health and human services contracts to
6 submit a "pre-tax" bid. The ability to submit a "pre-tax bid"
7 does not apply to not-for-profit companies because not-for-
8 profits are not subject to the insurance premium tax which is
9 mandated by Hawaii law.

10 In 2008, two for-profit companies bid for the QUEST
11 Expanded Access Program contracts and were awarded the
12 contracts. In addition, the administration and the department
13 of human services agreed to rebate the amount of the insurance
14 premium tax of 4.265 per cent to these companies, resulting in a
15 higher award amount than the companies had bid. It appears that
16 the state administration, during these difficult financial
17 times, will be "rebating" these companies approximately

1 \$25,000,000 and then the companies will pay their taxes with
2 these funds. Concerned groups have argued that this is not
3 proper, if not illegal, because the legislature is the only
4 branch of government with the power to impose, waive, or rebate
5 a tax by exempting certain types of organizations.

6 On December 18, 2008, in *Hawaii Insurers Council vs.*
7 *Lingle*, 120 Hawaii 51, 201 P.3d 564 (2008), the Hawaii supreme
8 court held that only the legislature has the power to tax
9 persons or entities. The court further held that "[t]he
10 executive branch is left only with the power to administer and
11 enforce the state's tax laws, not to levy new taxes."

12 The purpose of this Act is to clarify that any organization
13 that is awarded a contract through state procurement laws and
14 the request for proposal process shall not be entitled to
15 receive more money, in any form, than the amount of the bid. It
16 further requires bidders to be properly licensed in the State to
17 conduct the business being sought by the request for proposals,
18 unless the business being sought is not required by the State to
19 be licensed.

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

HB1642 SD1.DOC
HB1642 SD1.DOC
HB1642 SD1.DOC

1 "§103F- Proposals. Proposals subject to this chapter
2 shall be:

- 3 (1) Submitted by an applicant duly licensed in the state
4 to conduct the business being sought by the request
5 for proposals; provided that the applicant is required
6 by statute to be licensed to conduct the business
7 being sought by the request for proposals; and
8 (2) For the exact amount to be expended by the State,
9 regardless of the tax status of the applicant."

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

13 SECTION 4. New statutory material is underscored.

14 SECTION 5. This Act shall take effect on July 1, 2009.

Report Title:

Purchases of Health and Human Services; Request for Proposals

Description:

Specifies that proposals for purchases of health and human services must be submitted by duly licensed providers and for the exact amount to be expended by the State, unless statutes do not require the business to be licensed to provide the service being bid on. (SD1)