



GOV. MSG. NO. **507**

EXECUTIVE CHAMBERS  
HONOLULU

LINDA LINGLE  
GOVERNOR

April 22, 2010

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fifth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith HB1642 HD1 SD2 CD1, without my approval, and with the statement of objections relating to the measure.

HB1642 HD1 SD2 CD1

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

Sincerely,

  
LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

April 22, 2010

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1642

Honorable Members  
Twenty-Fifth Legislature  
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 1642, entitled "A Bill for an Act Relating to the Purchases of Health and Human Services."

The purpose of this bill is to require proposals for purchases of health and human services under chapter 103F, Hawaii Revised Statutes, to be submitted only by licensed providers. This bill also requires that these proposals include all costs, fees, and taxes, and that any award or contract shall be for the amount of the proposal. Finally, this bill prohibits any award or contract under chapter 103F from including any other payment, rebate, or direct or indirect consideration that is not included in the proposal.

This bill is objectionable because it adversely impacts health and human services contracts by limiting the pool of qualified providers, decreasing competition, and increasing costs.

Both the Department of Health and the Department of Human Services issue requests for proposals that do not require licensure at the time the proposal is submitted. The licensure process for providers of health and human services contracts can be expensive and time consuming, particularly for non-profit organizations. Applicants currently submit proposals with the expectation that licensure must be obtained to perform the contracted services if they win the bid. The inability of these

STATEMENT OF OBJECTIONS

HOUSE BILL NO. 1642

PAGE 2

providers to bid before they have the requisite license will reduce the number of qualified providers that will submit proposals, thereby limiting the number of bidders available to provide valuable services to the disabled, sick, and low income families. Reducing the number of applicants that may bid on a request for proposals also reduces competition which can lead to higher bids and thus higher costs to the State. It is in the best interest of the public to allow the purchasing agent to decide at what point, upon proposal deadline or prior to award or contract commencement date, that licenses should be in place.

This bill is also objectionable because it requires any award or contract to be for the amount of the proposal. Under the current procurement process, the bidder proposes a dollar amount to provide the proposed services and the purchasing agency determines the amount of the award based on the availability of funds, the scope of services, and the quality of the proposal. Under this bill, the bidder dictates the award amount and the purchasing agency would no longer have the authority to adjust the award during contract negotiations, even in instances when there are legitimate budget constraints.

Furthermore, for some health and human services contracts, the total amount of the final contract cannot be determined in advance and, therefore, cannot be included in a bidder's proposal. As an example, payment under a contract for residential services may be based on the number of bed-days used times a set per-day rate. The number of days actually utilized is not known in advance. Therefore, the requests for proposals are structured to require bids that reflect the cost of units of service with the caveat that the exact number of units to be used may vary from estimates provided in the solicitation.

Consequently, the requirement in this bill that proposals include all costs, fees, and taxes, and that the resulting contract be for the amount of the proposal, would remove the ability of state agencies to implement rate schedules that are used for many health and human services.

If purchasing agencies must estimate the total quantity of services needed under a particular solicitation in order to comply with this measure, it is likely costs to the State would increase. In order to solicit a bid that includes all costs of the resulting contract, the State will have to generously estimate the total amount of services required, rather than structuring the solicitation and contract to allow the State to pay only for the services that are actually rendered. Alternatively, the State may specify in the solicitation a possible range of services that will be required under the contract and the bidders will be required to bid at the upper range of possible bid prices for the total quantity to ensure that they have not underbid.

Finally, it appears that the provisions of this bill relating to insurance premium or general tax rebates or waivers are unnecessary. The Legislature included them based on a misperception that the State should not be paying its contractors for these taxes or, in the case of Medicaid contracts, that the State would be unable to secure federal matching funds to pay those costs. In fact, these taxes are an accepted cost of doing business in the State, which purchasers, including State agencies, typically include in their contracts for goods and services. Moreover, the State may obtain federal reimbursement for such taxes to the same extent that it receives federal funds for other federally-reimbursed expenses.

STATEMENT OF OBJECTIONS  
HOUSE BILL NO. 1642  
PAGE 4

For the foregoing reasons, I am returning House Bill  
No. 1642 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "L. Lingle", written in a cursive style.

LINDA LINGLE  
Governor of Hawaii

# VETO

HOUSE OF REPRESENTATIVES  
TWENTY-FIFTH LEGISLATURE, 2009  
STATE OF HAWAII

H.B. NO. 1642  
H.D. 1  
S.D. 2  
C.D. 1

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## 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. Recently, the  
4 request for proposal for the QUEST Expanded Access contract  
5 allowed for-profit organizations intending to bid for health and  
6 human services contracts to submit a "pre-tax" bid. The ability  
7 to submit a "pre-tax" bid does not apply to not-for-profit  
8 companies because not-for-profits are not subject to the  
9 insurance premium tax which is mandated by Hawaii law.

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



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

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

11 On December 18, 2008, in *Hawaii Insurers Council v. Lingle*,  
12 120 Hawai'i 51, 201 P.3d 564 (2008), the Hawaii supreme court  
13 held that only the legislature has the power to tax persons or  
14 entities. The court further held that "[t]he executive branch  
15 is left only with the power to administer and enforce the  
16 state's tax laws, not to levy new taxes."

17 The purpose of this Act is to clarify certain award and  
18 contract procedures through state procurement laws and the  
19 request for proposal process for purchases of health and human  
20 services under Chapter 103F, Hawaii Revised Statutes. It  
21 further requires bidders to be properly licensed in the state to  
22 conduct the business being sought by the request for proposals,



1 unless the business being sought is not required by the State to  
2 be licensed.

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

6 "§103F- Proposals and awards. (a) No contract  
7 proposals shall be accepted from any applicant who lacks any  
8 license necessary to conduct the business being sought by the  
9 request for proposals.

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

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

20 SECTION 4. New statutory material is underscored.

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

