
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 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 profit companies are not subject to the insurance premium tax
9 that is mandated by Hawaii law.

10 In 2008, two for-profit companies bid for the QUEST
11 Expanded Access (QExA) Program contracts and were awarded the
12 contracts. After losing the QExA contract, a losing bidder
13 filed numerous appeals, including one with the federal district
14 court, all of which upheld the decision of the State and
15 affirmed that the contract was rightfully awarded. Due to
16 confusion and misunderstandings regarding the bidding and
17 awarding process used by the department of human services, House
18 Bill No. 1642 and Senate Bill No. 1191 were introduced during



1 the 2009 legislative session to address some of these
2 misunderstandings.

3 During the interim, the affected parties have made attempts
4 to reconcile the matter, and all have agreed that the ultimate
5 goal is to have all bidders be treated in a fair and equal
6 manner.

7 As a result of the parties being unable to reach a mutually
8 agreeable interpretation of the legality of the bidding process
9 utilized by the department of human services, other alternative
10 proposals have arisen as potential methods of ensuring fair and
11 equal treatment by all bidders for health and human services
12 contracts issued by the State.

13 The purpose of this Act is to:

- 14 (1) Clarify that the premium tax shall be applied to any
15 organization that is awarded a contract through state
16 procurement laws and the request for proposal process,
17 regardless of whether they are a non-profit or for-
18 profit company; and
- 19 (2) Require bidders to be properly licensed in the State
20 to conduct the business being sought by the request
21 for proposals, unless the business being sought is not
22 required by the State to be licensed.



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

4 "§103F- Premium Tax. Any applicant submitting a
5 proposal subject to this chapter, whether a not-for-profit or a
6 for-profit organization, shall be:

7 (1) Duly licensed in the State to conduct the business
8 being sought by the request for proposals; provided
9 that this paragraph shall not apply if contractors of
10 the business being sought by the request for proposals
11 are not required by statute to be licensed; and

12 (2) Responsible for payment of all applicable federal,
13 state, and county taxes and fees that may become due
14 and owing by the provider by reason of a contract with
15 the State, including:

- 16 (A) Income taxes;
- 17 (B) Employment related fees, assessments, and taxes;
- 18 and
- 19 (C) General excise taxes."

20 SECTION 3. The department of health and the department
21 human services shall execute contract amendments with any
22 existing contracts, and any subsequent contracts shall reflect

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1 the payment of any applicable taxes and fees in order to ensure
2 that any winning bidder is able to remain financially solvent.

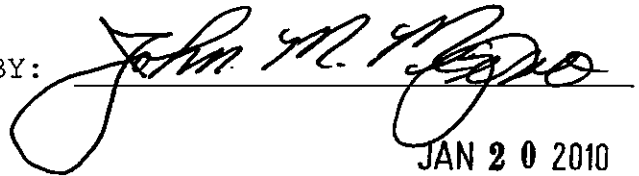
3 SECTION 4. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

6 SECTION 5. New statutory material is underscored.

7 SECTION 6. This Act shall take effect on July 1, 2010.

8

INTRODUCED BY:


JAN 20 2010



Report Title:

Premium tax applicability for procurement of health and human services contracts

Description:

Mandates that any premium taxes be applied to both non-profit and for-profit companies for any health and human services contract issued by the State.

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