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GOVERNOR



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**REVISED TESTIMONY  
OF  
SARAH ALLEN, ADMINISTRATOR  
STATE PROCUREMENT OFFICE**

**TO  
THE SENATE COMMITTEES  
ON  
GOVERNMENT OPERATIONS  
AND  
HUMAN SERVICES**

February 7, 2020, 2:55 pm

**SB 2838  
RELATING TO HUMAN SERVICES**

Chairs Thielen and Ruderman, Vice Chairs Inouye and Rhoads and members of the committees, thank you for the opportunity to submit testimony on SB2838. The State Procurement Office (SPO) strongly supports the intent of the bill to promote efficiency and accountability of procurement procedures.

Health and Human Procurements pursuant to 103F, HRS, are for services that directly impact the community. Providers, often non-profit organizations, are contracted to build homeless shelters, to provide healthcare services, to provide substance abuse prevention programs, and even yoga training for inmates.

This bill, proposed by SPO, requests statutory changes and consideration for adding the cost and pricing requirement to align with HRS 103D. However, the SPO respectfully requests an amendment based on newly learned information:

**A. Cost and Pricing Certification Requirement is Duplicative and too onerous.**

1. Over the past few months, the SPO Health and Human Services Division has been working very closely with the Department of Human Services (DHS) Homeless Programs Office for the purpose of examining old policy to determine what has changed with the new Federal Grant Regulations: 2CFR200.

2. Concurrently, SPO has been developing a cost analysis training for fuller guidance on how to analyze formal, certified cost and pricing.

The result of these two experiences has shown the SPO that the budgetary and resource burden placed on non-profits by the government is large and already complex. Government buyers already receive line-by-line budgets and actual costs from these organizations to comply with Federal Grants. Federal Grants already require cost and pricing data over a specified threshold.

For these reasons, the SPO is recommending removing the certification cost and pricing data process but keeping the requirement of price analysis for all health and human services procurements to determine the price is fair and reasonable for the services being procured.

**Requested Amendments:**

Delete Section 2, Page 2, Lines 11-13.

Change (b)(2) to (b)(1);

Delete Section 2, Page 2, Lines 17-21, Entire Page 3, and Page 4, Lines 1-4.

**Shown as follows:**

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

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

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

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

(2) ~~Other d~~ Data necessary to perform a cost or price analysis to determine that the amount of the contracting action is a fair and reasonable price.

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

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

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

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

- ~~(1) Contract awards based on adequate price competition;~~
- ~~(2) Contract awards where the contract price is based upon established catalog or market prices;~~
- ~~(3) Contract awards where the contract price is set by law or administrative rule;~~
- ~~(4) Contract awards for small purchases pursuant to section 103F 403, except for change orders and change modifications that increase an original small purchase contract to an amount beyond the threshold amount set forth in section 103F 403; and~~
- ~~(5) Contracting actions that, in accordance with rules adopted by the procurement policy board, may be waived by the chief procurement officer from the requirements of this section; provided that the reasons for such waiver are in writing; and provided further that the chief procurement officer shall not delegate this authority."~~

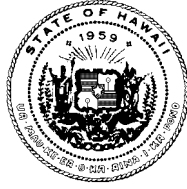
**B. Request addition of the phrase "or designee" to be attached to each mention of the Head of Purchasing Agency in Section 4 as follows:**

For Page 7, Lines 3-4, 12,17: "The Head of the Purchasing Agency, or designee..."

For Page 8, Lines 3-4, 16-17: "The Head of the Purchasing Agency, or designee..."

Thank you.

DAVID Y. IGE  
GOVERNOR



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DIRECTOR

CATHY BETTS  
DEPUTY DIRECTOR

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February 6, 2020

TO: The Honorable Senator Laura H. Thielen, Chair  
Senate Committee on Government Operations

The Honorable Senator Russel E. Ruderman, Chair  
Senate Committee on Human Services

FROM: Pankaj Bhanot, Director

SUBJECT: **SB 2838 – RELATING TO PROCUREMENT**

Hearing: February 7, 2019 at 2:55 p.m.  
Conference Room 016, State Capitol

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) appreciates the intent of this administration measure, and provides comments and concerns.

**PURPOSE:** The purpose of this bill 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.

First, DHS does not have the current expertise or access to resources to determine what is “fair and reasonable pricing policy; cost of pricing data.” DHS requires clarification about what type of “data” and criterion are acceptable, who can certify the cost or pricing data provided by the contractor. Also, DHS does not have the staff who can analyze the data to determine whether the cost increase is fair and reasonable during contract extension. Currently, DHS relies upon information provided during the bidding process and upon information from other states who have conducted similar procurements.

Second, DHS is further concerned about the proposed amendment to section 103F-404, amending the language from “administrator” to “head of the purchasing agency.”

“Administrator” as currently defined in section 103F-102, Hawaii Revised Statutes (HRS), and means the administrator of the state procurement office. The Director of the Department of Human Services (Director) is delegated by the Chief Procurement Officer as the “head of the purchasing agency” (HOPA) for the Department of Human Services (DHS).

Should “administrator” be removed from the section and replaced with the “head of purchasing agency,” we anticipate that DHS and other executive departments will encounter challenges in implementing the proposed statute. The head of the purchasing agency, especially those who are new to the executive branch, may not understand the procurement process or nuances related to cost and pricing analysis. Further, removing the authority to delegate this function to a subject matter expert within the authority, will further complicate and delay necessary and timely procurement of health and human services.

Third, although the Director oversees DHS from a departmental perspective, the administrators from the Social Services Division (SSD), Benefit, Employment & Support Services Division (BESSD), Med-Quest Division (MQD), Division of Vocation Rehabilitation (DVR), Hawaii Public Housing Authority (HPHA), Office of Youth Services (OYS), Commission on the Status of Women (HSCSW), Commission on Fatherhood, and the Hawai`i Interagency Council on Homelessness, who are expected to be the subject matter experts and are most familiar with the specialized needs of the clients being served by their respective divisions or commissions.

It would be more appropriate for the administrators, not the HOPA (Director), to continue to be involved with procurement of treatment services under Chapter 103F, HRS. If the intent of the measure is to promote efficiency, program success, and accountability, this proposed change would not necessarily render these results; it would however, significantly, impact the ability of the Director to perform the necessary executive functions that is demanded to deliver the bulk of the State's health and human services to 1 in 4 Hawaii residents.

Also, should the Director assume the duties and responsibilities currently performed by division administrators when procuring services, unintended delay may be likely as the Director will need additional time to consult with the administrators.

As such, DHS requests, that if “Administrator” is deleted, that it be replaced with “head of the purchasing agency, or a designee.” It would be prudent to add the language of “or a designee” after each occurrence of “head of purchasing agency.”

Thank you for the opportunity to provide testimony on this measure.