H.B. NO. ⁸⁸² H.D. 1 S.D. 2

H.D. 1 S.D. 2 Proposed

A BILL FOR AN ACT

RELATING TO PROCUREMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1	PART I
2	SECTION 1. Chapter 103F, Hawaii Revised Statutes, is
3	amended by adding a new section to part IV to be appropriately
4	designated and to read as follows:
5	" <u>§103F-</u> Fair and reasonable pricing policy; cost or
6	pricing data. (a) For each contracting action under this
7	chapter, including any change orders or contract modifications
8	that increase the original contract amount, the purchasing
9	agency shall make a written determination that the amount of the
10	contracting action is fair and reasonable.
11	(b) In determining whether the amount of the contracting
12	action is fair and reasonable, the purchasing agency shall
13	obtain the data necessary to perform a cost or price analysis to
14	determine that the amount of the contracting action is a fair
15	and reasonable price."
16	SECTION 2. Section 103D-201, Hawaii Revised Statutes, is
17	amended by amending subsection (b) to read as follows:





1	"(b)	The policy board shall consist of [seven] <u>six</u>
2	members.	Notwithstanding the limitations of section 78-4, the
3	members of	f the board shall include:
4	(1)	The comptroller;
5	(2)	A county employee with significant high-level
6		procurement experience; and
7	(3)	[Five] <u>Four</u> persons who shall not otherwise be full-
8		time employees of the State or any county; provided
9		that at least one member shall be a [certified]
10		professional in the field of procurement, at least one
11		member shall have significant high-level, federal
12		procurement experience, and at least [two members
13		shall have significant experience in the field of
14		health and human services.] one member shall represent
15		the Hawaii Alliance of Nonprofit Organizations;
16		Protecting Hawaii's Ohana, Children, Under-Served,
17		Elderly, and Disabled; or a similar organization.
18	Each appo	inted member shall have demonstrated sufficient
19	business (or professional experience to discharge the functions
20	of the po	licy board. The initial and subsequent members of the
21	policy boa	ard, other than the comptroller, shall be appointed by

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1 the governor from a list of [three] two individuals for each 2 vacant position, submitted by a nominating committee composed of 3 [four] three individuals chosen as follows: [two persons] one person appointed by the governor; one person appointed by the 4 5 president of the senate; and one person appointed by the speaker 6 of the house [-] of representatives. Except as provided in this 7 section, the selection and terms of the policy board members 8 shall be subject to the requirements of section 26-34. No 9 member of the policy board shall act concurrently as a chief 10 procurement officer. The members of the policy board shall 11 devote such time to their duties as may be necessary for the 12 proper discharge thereof."

13 SECTION 3. Section 103F-404, Hawaii Revised Statutes, is14 amended to read as follows:

15 "[+]\$103F-404[+] Treatment purchase of services. (a)
16 Treatment services may be purchased in accordance with this
17 section if [either or both of] the following circumstances are
18 applicable:

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



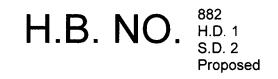


1	(2)	When deferring treatment until solicitation, provider
2		selection, and contract formation can be completed,
3		the problem needing treatment would be rendered worse
4		than at the time of diagnosis or assessment.
5	Contracts	for treatment services shall be awarded on the basis
6	of-demons	trated competence and qualification for the type of
7	service r	equired, and at fair and reasonable prices.
8	-(b)	At a minimum, before the beginning of each fiscal
9	year, the	administrator shall publish a notice describing the
10	types of	treatment services that may be needed throughout the
11	year on a	-periodic basis and inviting providers engaged in
12	providing	these treatment services to submit current statements
13	of qualif	ication and expressions of interest to the office. The
14	chief pro	curement officer may specify a uniform format for
15	statement	s of qualifications.]
16	(1)	The need for treatment services is unanticipated and
17		arises from time to time;
18	(2)	The required services are for a one-time purchase for
19		not more than \$100,000 and no longer than one year;

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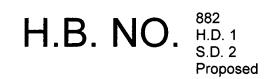
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1	(3)	The services are industry standard services and are
2		generally accepted practices by the industry or
3		profession; and
4	(4)	The award of a contract is based on demonstrated
5		competence and qualification for the type of service
6		required and at fair and reasonable prices.
7	(b)	The head of the purchasing agency, or a designee,
8	<u>shall, at</u>	a minimum, publish a notice describing the types of
9	treatment	services that may be needed throughout the fiscal year
10	<u>on an as-</u> :	needed basis and invite providers engaged in providing
11	these treating	atment services to submit current statements of
12	qualifica	tion and expressions of interest to the purchasing
13	agency.	Providers may amend these statements by filing an
14	amended o	r new statement prior to the date designated for
15	submissio:	n.
16	(c)	The [administrator] head of the purchasing agency
17	shall for	m an initial review committee for each profession,
18	consisting	g of a minimum of three employees from a state agency
19	or agenci	es with sufficient education, training, and licenses or
20	credentia	ls to evaluate the statements of qualifications which
21	the [admi	nistrator] head of the purchasing agency receives in

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1 response to the notice published pursuant to subsection (b). 2 The committee shall review and evaluate the submissions and 3 other pertinent information, including references and reports, 4 and prepare a list of qualified providers to provide treatment 5 services during the fiscal year. Providers included on the list 6 of qualified treatment providers may amend their statements of 7 qualifications as necessary or appropriate. Providers shall 8 immediately inform the [administrator] head of the purchasing 9 agency of any changes in information furnished [which] that 10 would disqualify the provider from being considered for a 11 contract award.

12 (d) When the need to purchase treatment <u>services</u> arises, 13 the head of a purchasing agency shall select the provider most 14 qualified to provide the needed treatment from the list of 15 qualified providers.

(e) The head of the purchasing agency, or a designee,
shall negotiate a contract, including a rate of compensation
[which] that is fair and reasonable, established in writing, and
based upon the estimated value, scope, nature, and complexity of
the treatment services to be rendered, or use the rate
established by the [administrator,] head of the purchasing

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<u>agency</u>, if any. If negotiations fail, upon written notice of an
 impasse to the provider selected under subsection (d), the head
 of the purchasing agency shall choose another provider from the
 list of qualified providers, and conduct further negotiations.
 Negotiations shall be conducted confidentially.

6 (f) Contracts for treatment <u>services</u> in excess of \$100,000
7 or <u>that last for more than</u> one year shall [be procured using
8 section 103F 402, competitive purchase of services, unless a
9 waiver of this subsection is approved by the chief procurement
10 officer.] <u>utilize an applicable method of procurement.</u>"

11 SECTION 4. Section 103F-405, Hawaii Revised Statutes, is 12 amended to read as follows:

13 "[+]\$103F-405[+] Small purchases. Purchases of health and 14 human services of less than [\$25,000] \$100,000 are small 15 purchases, and shall be made in accordance with [section 103D-16 305 and] rules adopted by the policy board to implement [that] 17 this section."

18 SECTION 5. Section 103F-202, Hawaii Revised Statutes, is19 repealed.

20 ["[\$103F-202] Community council. (a) There is

21 established a community council on purchase of health and human



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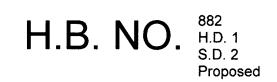
1	services. The community council shall be comprised of no more
2	than nine voting members, and one non-voting, ex-officio member
3	of the interagency committee on purchase of health or human
4	services designated by the majority of the members of the
5	committee. There shall be a member from each county, except the
6	county of Kalawao, and up to five members interested in health,
7	human services, employment, or the provision of services to
8	children and youth.
9	(b) Voting members shall be appointed by the governor and
10	serve for four years. Each voting member shall serve until the
11	member's successor is appointed. Section 26-34 shall apply
12	insofar as it relates to the number of terms and consecutive
13	number of years a member may serve on the council.
14	(c) Members shall serve without compensation, but shall be
15	reimbursed for actual expenses, including travel expenses,
16	necessary for the performance of their duties.
17	(d) The community council shall advise the administrator
18	about or assist the administrator in:
19	(1) Market or business conditions facing providers;

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1	(2)	Securing input from providers to facilitate agency
2		decision making to assess needs, plan, budget, and
3		purchase health and human services;
4	(3)	Facilitating provider participation in the process
5		used by state agencies to plan for and purchase health
6		and human services;
7	(4)	Establishing schedules for planning and purchasing
8		health and human services in relation to the annual
9		and biennial budget cycles;
10	(5)	Developing criteria to evaluate proposals to provide
11		health and human services, and for restrictive
12		purchases under section 103F 403; and
13	(6)	The needs of purchasing agencies and providers for
14		education and training to improve planning for or
15		purchasing of health and human services."]
16		PART II
17	SECT	ION 6. The legislature finds that under the State's
18	procureme	nt code, an aggrieved party, that submitted a bid for a
19	state pro	ject that was not awarded the bid, may protest the bid
20	award. T	he legislature further finds that procurement protest
21	review ca	n be lengthy, causing project delays, thereby

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1 increasing project costs that are borne by taxpayers. Thus, it 2 is imperative that the review process for protests be completed 3 in a timely manner to reduce the cost of state projects. 4 Establishing a deadline for bid protests to be reviewed and 5 resolved would expedite the protest review process and reduce 6 the cost associated with state-awarded projects. 7 The purpose of this part is to create time limits to 8 resolve protests to the awards of competitive sealed proposal 9 contracts and procurements of professional services. 10 SECTION 7. Section 103D-701, Hawaii Revised Statutes, is 11 amended by amending subsection (c) to read as follows: "(c) The chief procurement officer or a designee shall 12 13 resolve any protest as expeditiously as possible. If the 14 protest is not resolved by mutual agreement, the chief 15 procurement officer or a designee shall [promptly] issue a 16 written decision [in writing] to uphold or deny the protest[-] 17 within seventy-five calendar days of receipt of the protest; unless extenuating circumstances require additional time, which 18 19 shall not exceed an additional thirty calendar days. The 20 decision shall:

21

(1) State the reasons for the action taken; and





1	(2) Inform the protestor of the protestor's right to an
2	administrative proceeding as provided in this part, if
3	applicable."
4	PART III
5	SECTION 8. Statutory material to be repealed is bracketed
6	and stricken. New statutory material is underscored.
7	SECTION 9. This Act shall take effect on July 1, 2112.





Report Title:

Procurement; Purchase of Health and Human Services; Procurement Policy Board; Treatment Services; Community Council; Procurement Protests; Resolution; Chief Procurement Officer; Time Limit

Description:

Requires purchasing agencies to make a written determination that the amount of a contracting action for purchases of health and human services is fair and reasonable. Amends the selection process and composition of the procurement policy board. Amends the circumstances for when treatment services may be purchased and the procedure to purchase such services. Increases the small purchase threshold. Repeals the establishment of the community council on purchase of health and human services. Requires the chief procurement officer or designee to address protests as expeditiously as possible. Creates time limits to resolve protests to the awards of competitive sealed proposal contracts and procurements of professional services. Effective 7/1/2112. (Proposed SD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

