



**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

P.O. Box 119  
Honolulu, Hawaii 96810-0119  
Tel: (808) 586-0554  
email: [state\\_procurement\\_office@hawaii.gov](mailto:state_procurement_office@hawaii.gov)  
<http://spo.hawaii.gov>

TESTIMONY  
OF  
BONNIE KAHAKUI, ACTING ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO  
THE HOUSE COMMITTEE  
ON  
GOVERNMENT REFORM

FEBRUARY 12, 2021, 10:00 A.M.

HOUSE BILL 882  
RELATING TO PROCUREMENT

Chair McKelvey, Vice Chair Wildberger, and members of the committees, thank you for the opportunity to submit testimony on HB882. The State Procurement Office (SPO) **strongly supports** this bill, which abolishes the Community Council on Purchase of Health and Human Services (Council) and repeals section 103F-202, Hawaii Revised Statute (HRS). The SPO also respectfully requests additional revisions and language to be inserted into the bill.

Community Council on Purchases of Health and Human Services

The Council was established in 1997 to provide input to the SPO to develop the rules, infrastructure and procedures for procuring health and human services. Section 103F-106, HRS, states that the Procurement Policy Board (Board) established under section 103D-201, HRS, shall adopt all rules necessary to implement Chapter 103F, Purchases of Health and Human Services, rendering 103F-106, HRS, unnecessary. Furthermore, the rules on health and human services procurement are well-established, and both providers and purchasing agencies are acclimated to those rules and associated procurement process. Abolishing the Council would have no impact on the public or any State and County agencies.

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Additional Revisions and Language

SPO requests that additional revisions to the bill to promote procurement efficiency, program success, and government accountability for health and human services procurement. The additional language will (1) streamline membership requirements for the Board, (2) promote fair and reasonable prices through government transparency and accountability, (3) increase

efficiency and short-term treatment purchase of services, and (4) increase the small purchase threshold to competitively procure health and human services.

(1) Streamline membership requirements for the Board (Section 103D-201, HRS)

This revision is to promote procurement efficiency by creating a more agile PPB. The Board, which adopts, amends, or repeals administrative rules for HRS chapters 103D and 103F, has increasingly needed more time to promulgate rules. The main reasons for the need of additional time are the lack of quorum (thirty-three percent of all scheduled meetings had to be cancelled) and the difficulty to attract potential qualified candidates for the nomination and confirmation process per Statute. By reducing the number of members on the Board, and thus reducing the required number of candidates for the vacant positions, the ability to obtain quorum and promulgate rules will improve and result in a more responsive and agile board.

SPO proposes following revision to Section 103D-201, HRS:

" SECTION 3. Section 103D-201, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

(b) The policy board shall consist of [~~seven~~] six members.

Notwithstanding the limitations of section 78-4, the members of the board shall include:

(1) The comptroller;

(2) A county employee with significant high-level procurement experience; and

(3) [~~Five~~] Four persons who shall not otherwise be full-time employees of the State or any county; provided that at least one member shall be a [certified] professional in the field of procurement, at least one member shall have significant high-level, federal procurement experience, and at least [~~two members~~] one member shall have significant experience in the field of health and human services.

Each appointed member shall have demonstrated sufficient business or professional experience to discharge the functions of the policy board. The initial and subsequent members of the policy board, other than the comptroller, shall be appointed by

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

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(2) Promote fair and reasonable prices through government transparency and accountability (Section 103F-401, HRS)

The proposed additional language requests statutory changes and consideration for adding the cost and pricing requirement to align with Chapter 103D, HRS. The SPO Health and Human Services section 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).

Concurrently, SPO developed a cost analysis training for fuller guidance on how to analyze formal, certified cost and pricing.

SPO's experience in reviewing old policy and developing cost analysis training has shown the SPO that the budgetary and resource burdens 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, thereby making cost and pricing certification requirement duplicative and too onerous.

SPO proposes the following revision to Section 103F, HRS:

"SECTION 2. Chapter 103F, Hawaii Revised Statutes, is amended by adding to part IV a new section to be appropriately designated and to read 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 data necessary to perform a cost or price analysis to determine that the amount of the contracting action is a fair and reasonable price."

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(3) Increase efficiency and short-term treatment purchase of services (Section 103F-404, HRS)

The SPO recommends amending section 103F-404, HRS, Treatment purchase of services. This will allow departments to issue the request for statements of qualifications and to establish their own lists of qualified providers.

The primary objective is to provide purchasing agencies expedited services for specific needs. As each department and Chief Procurement Officer jurisdiction may have unanticipated, short-term requirements specific for its service needs, it is in the best interest of the State to allow each department, via its head of purchasing agency or designee, to establish its own lists of qualified providers, when applicable. This Act increases the efficiency, speed and flexibility at which purchasing agencies meet unanticipated health and human service's needs

Purchasing agencies shall provide public notice to invite all qualified providers which maintains a level playing field and ensures transparency. The head of the purchasing agency, or a designee, shall negotiate a contract, including a rate of compensation that is fair and reasonable or use a rate established by the head of the purchasing agency. This section maintains all the

procurement protections and contracting processes for achieving successful results while safeguarding taxpayers' money.

The SPO proposes to amend Section 103F-404, HRS, as follows:

"~~[[~~§103F-404~~]]~~ Treatment purchase of services. (a)  
Treatment services may be purchased in accordance with this section if ~~{either or both of}~~ the following circumstances are applicable:

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

~~—————(2) When deferring treatment until solicitation, provider selection, and contract formation can be completed, the problem needing treatment would be rendered worse than at the time of diagnosis or assessment.~~

~~Contracts for treatment services shall be awarded on the basis of demonstrated competence and qualification for the type of service required, and at fair and reasonable prices.]~~

(1) The need for treatment services is unanticipated and arises from time to time;

(2) The required services are for a one-time purchase for not more than \$100,000 and no longer than one year;

(3) The services are industry standard services, that is, the services are generally accepted practices by the industry or profession; and

(4) The award of a contract is based on demonstrated competence and qualification for the type of service required and at fair and reasonable prices.

~~(b) [At a minimum, before the beginning of each fiscal year, the administrator shall publish a notice describing the types of~~

~~treatment services that may be needed throughout the year on a periodic basis and inviting providers engaged in providing these treatment services to submit current statements of qualification and expressions of interest to the office. The chief procurement officer may specify a uniform format for statements of qualifications.]~~ The head of the purchasing agency, or a designee, shall, at a minimum, publish a notice describing the types of treatment services that may be needed throughout the fiscal year on an as-needed basis and inviting providers engaged in providing these treatment services to submit current statements of qualification and expressions of interest to the purchasing agency. Providers may amend these statements by filing an amended or new statement prior to the date designated for submission.

(c) The ~~[administrator]~~ head of the purchasing agency shall form an initial review committee for each profession, consisting of a minimum of three employees from a state agency or agencies with sufficient education, training, and licenses or credentials to evaluate the statements of qualifications which the ~~[administrator]~~ head of the purchasing agency receives in response to the notice published pursuant to subsection (b). The committee shall review and evaluate the submissions and other pertinent information, including references and reports, and prepare a list of qualified providers to provide treatment services during the fiscal year. Providers included on the list of qualified treatment providers may amend their statements of qualifications as necessary or appropriate. Providers shall immediately inform the ~~[administrator]~~ head of the purchasing agency of any changes in information furnished ~~[which]~~ that

would disqualify the provider from being considered for a contract award.

(d) When the need to purchase treatment arises, the head of a purchasing agency shall select the provider most qualified to provide the needed treatment from the list of 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 agency, 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.

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

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(4) Increase the threshold for procurement of health and human services small purchases (section 103F-405)

Section 103F-405, HRS, was established to provide purchasing agencies an expedited way to competitively procure health and human services less than \$25,000. The statute currently requires purchasing agencies to follow the small purchase procedures in accordance with section 103D-305, HRS.

Over the years, the small purchase limit and the procurement process for chapter 103D, HRS, changed. The resulting disparity warrants separate small purchase procedures through administrative rules authorized in chapter 103F, HRS. The proposed revision provides required clarification to purchasing agencies. As amended, HRS 103F-405 stands on its own by deleting the reference to follow section 103D-305, HRS.

The SPO proposes to amend Section 103F-405, HRS, as follows:

SECTION 5. Section 103F-405, Hawaii Revised Statutes, is amended to read as follows:

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

Thank you for the opportunity to testify in strong support of HB882 and for your consideration of SPO's proposed revisions to the bill.