
A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1 SECTION 1. Approximately ninety per cent of Hawaii's food
2 is imported from the continental United States or foreign
3 countries. This equates to an exportation of over
4 \$3,000,000,000 annually to places outside of Hawaii.

5 But, this practice does not occur only on a public
6 commercial level. Even the State of Hawaii and its political
7 subdivisions, as large purchasers and consumers of agricultural
8 products, procure agricultural products outside the State of
9 Hawaii. However, this is contrary to the intent of the
10 procurement laws.

11 In 1994, Act 186 created a "preference" for purchase of
12 Hawaii products, which was codified into part X of chapter 103D,
13 Hawaii Revised Statutes. The purpose was to provide Hawaii
14 businesses a procurement preference similar to the federal
15 government's "Buy American Act" under Federal Acquisition
16 Regulation 52.225-1.

17 SECTION 2. Section 103D-1001, Hawaii Revised Statutes, is
18 amended as follows:

SB506 SD1.DOC
SB506 SD1.DOC
SB506 SD1.DOC

1 1. By adding two new definitions to be appropriately
2 inserted and to read:

3 "Hawaii input" means the part of the cost of a product
4 having a Hawaii component that is attributable to production,
5 manufacturing, or other expenses arising within the State.

6 "Hawaii input" includes but is not limited to:

7 (1) The cost to mine, excavate, produce, manufacture,
8 raise, or grow the materials in Hawaii;

9 (2) The added value of that portion of the cost of
10 imported materials that is incurred after landing in
11 Hawaii, including but not limited to other articles,
12 materials and supplies added to the imported
13 materials;

14 (3) The cost of labor, variable overhead, utilities, and
15 services incurred in the production and manufacturing
16 of materials or products in the State; and

17 (4) Fixed overhead cost and amortization or depreciation
18 cost, if any, for buildings, tools and equipment
19 situated and located in the State and utilized in the
20 production or manufacturing of a product.

1 "Hawaii component" means those articles, materials,
2 supplies and labor incorporated directly into the products
3 acquired for public use under the contract."

4 2. By amending the definitions of "Hawaii products",
5 "products", and "qualified community rehabilitation program" to
6 read:

7 "Hawaii products" means products that are mined,
8 excavated, produced, manufactured, raised, or grown in the State
9 and where the [input constitutes no less than twenty-five] cost
10 of the Hawaii input towards the product exceeds fifty per cent
11 of the [manufactured] total cost[+] of the product; provided
12 that:

13 ~~[-(1) Where the value of the input constitutes twenty-five~~
14 ~~per cent or more, but less than fifty per cent, of the~~
15 ~~manufactured cost, the product shall be classified as~~
16 ~~class I;~~

17 ~~-(2)]~~ (1) Where the value of the input [~~constitutes~~
18 exceeds fifty per cent [~~or more, but less than~~
19 ~~seventy-five per cent,~~] of the [~~manufactured~~] total
20 cost, the product shall be classified as class [~~II;~~
21 I; and

1 ~~[(3) Where the value of the input constitutes seventy-five~~
2 ~~per cent or more of the manufactured cost, the product~~
3 ~~shall be classified as class III.]~~

4 (2) Where any agricultural, aquacultural, horticultural,
5 silvicultural, floricultural, or livestock product is
6 raised, grown, or harvested in the State, the product
7 shall be classified as class II.

8 "Products" include materials, manufactures, supplies,
9 merchandise, goods, wares, products, and foodstuffs~~[-]~~ acquired
10 for public use under the contract.

11 "Qualified community rehabilitation program" means a
12 nonprofit community rehabilitation program for persons with
13 disabilities that:

14 (1) Is organized and incorporated under the laws of the
15 United States or this State, and located in this
16 State;

17 (2) Is operated in the interest of and ~~[+]~~employs~~[+]~~
18 persons with disabilities;

19 (3) Does not inure any part of its net income to any
20 shareholder or other individual;

1 (4) Complies with all applicable occupational health and
2 safety standards required by the federal, state, and
3 county governments; and

4 (5) Holds a current certificate from the United States
5 Department of Labor pursuant to the Fair Labor
6 Standards Act, Title 29 United States Code section
7 214(c), and is certified by the state department of
8 labor and industrial relations under section 387-9 and
9 applicable administrative rules relating to the
10 employment of persons with disabilities."

11 SECTION 3. Section 103D-1002, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§103D-1002 Hawaii products.** (a) A purchasing agency
14 shall review all specifications in a bid or proposal for
15 purchase from [the] Hawaii products [list] where these products
16 are available[; ~~provided that the products:~~

17 ~~(1) Meet the minimum specifications and the selling price~~
18 ~~f.o.b. jobsite;~~

19 ~~(2) Unloaded including applicable general excise tax and~~
20 ~~use tax does not exceed the lowest delivered price in~~
21 ~~Hawaii f.o.b. jobsite; and~~

1 ~~(3) Unloaded, including applicable general excise tax and~~
2 ~~use tax, does not exceed the lowest delivered price of~~
3 ~~a similar non-Hawaii product by more than:~~

4 ~~(A) Three per cent where class I Hawaii products are~~
5 ~~involved;~~

6 ~~(B) Five per cent where class II Hawaii products are~~
7 ~~involved; or~~

8 ~~(C) Ten per cent where class III Hawaii products are~~
9 ~~involved].~~

10 (b) All invitations for bids and requests for proposals
11 shall ~~[include a description]:~~

12 (1) Include a description of the products that are listed
13 in the Hawaii products list established pursuant to
14 this section, ~~[and their established classes,]~~ which
15 may be used to complete the scope of work specified in
16 the invitation for bids or request for proposals~~[~~
17 ~~where the products are];~~ or

18 (2) Allow self-certification as part of the offer that the
19 Hawaii products qualify for preference;
20 provided that the offer can be evaluated along with any other
21 published criteria in the solicitation, including but not
22 limited to considerations such as specific nutritional content

1 or equivalent, timing of delivery, quality or freshness, and
2 past performance, if applicable.

3 All Hawaii products in any bid or request for proposal
4 shall be made available [and meet] for inspection or additional
5 information may be requested to verify that the Hawaii product
6 meets the minimum specifications.

7 (c) All persons submitting bids or proposals to claim a
8 Hawaii products preference shall designate in their bids which
9 individual product and its price is to be supplied as a Hawaii
10 product.

11 (d) Where a bid or proposal contains both Hawaii and non-
12 Hawaii products, then for the purpose of selecting the lowest
13 bid or purchase price only, the price or bid [~~or~~] offered for a
14 Hawaii product item shall be decreased by subtracting
15 [~~therefrom: three per cent, five per cent, or~~] ten per cent for
16 [~~the~~] class I [~~, class II, or class III~~] Hawaii product items bid
17 or offered [~~, respectively.~~] or fifteen per cent for class II
18 Hawaii product items bid or offered [respectively]. The lowest
19 total bid or proposal, taking the preference into consideration,
20 shall be awarded the contract unless the bid or offer provides
21 for additional award criteria. The contract amount of any

1 contract awarded, however, shall be the amount of the bid or
2 price offered, exclusive of the preferences.

3 (e) Upon receipt and approval of application for Hawaii
4 products preference, the administrator shall include within the
5 Hawaii products list, the names of producers and manufacturers
6 in the State who are authorized to supply locally manufactured
7 soil enhancement products to state agencies under subsection
8 ~~[(h)-.]~~ (k). The administrator of the state procurement office
9 shall maintain and distribute copies of the list to the
10 purchasing agencies of the various governmental agencies.

11 (f) Any person, not on the Hawaii products list, desiring
12 a preference pursuant to this section shall certify the Hawaii
13 product when submitting a response to a solicitation, provided
14 that the person certifies under penalty of sanctions that the
15 offered Hawaii products meet the requirements for the
16 preference.

17 The procurement officer may request additional information
18 deemed necessary in order to qualify a product and shall have
19 sole discretion in determining qualification for the preference.

20 Any offeror whose product is deemed not qualified for the
21 preference may appeal by filing a written request for
22 reexamination of facts to the procurement officer. Upon

1 determining that the offeror is qualified for the preference,
2 the procurement officer shall notify the administrator to place
3 the offeror on the Hawaii products list.

4 (g) Solicitations shall contain a provision notifying
5 offerors who request application of the preference that in the
6 event of any change that materially alters the offeror's ability
7 to supply Hawaii products, the offeror shall immediately notify
8 the chief procurement officer in writing and the parties shall
9 enter into discussions for the purposes of revising the contract
10 or terminating the contract for convenience.

11 (h) Nothing in this section shall limit, restrict, or
12 preclude a Hawaii product from any preferences, set-asides, or
13 criteria that may be applied under section 103D-906, and this
14 section shall operate instead to mutually enhance the purposes
15 of both this section and section 103D-906.

16 [~~(f)~~] (i) This section shall not apply whenever its
17 application will disqualify any governmental agency from
18 receiving federal funds or aid.

19 [~~(g)~~] (j) Any purchase made or any contract awarded or
20 executed in violation of this section shall be void and no
21 payment shall be made by any purchasing agency on account of the
22 purchase or contract.

1 ~~(h)~~ (k) For the purposes of this section, "soil
2 enhancement product" means any nonchemical soil preparation,
3 conditioner, or compost mixture designed to supplement aeration
4 or add organic, green waste, or decaying matter to the soil;
5 provided that the term does not include any plant fertilizer
6 intended to stimulate or induce plant growth through chemical
7 means. All state agencies shall include in their solicitations,
8 when required, the soil enhancement products identified on the
9 Hawaii products list pursuant to subsection (e)."

10 SECTION 4. Chapter 103D, Hawaii Revised Statutes, is
11 amended by adding a new section to part X to be appropriately
12 designated and to read as follows:

13 "§103D- **Failure to adequately verify, deliver, or supply**
14 **Hawaii products.** If the administrator or procurement officer
15 who has awarded a contract under section 103D-1002, finds that
16 in the performance of that contract there has been a failure to
17 comply with section 103D-1002, the contract shall be voidable
18 and the findings shall be referred for debarment or suspension
19 proceedings under section 103D-702."

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

1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect on July 1, 2009.

Report Title:

Procurement; Hawaii Products; Preference

Description:

Allows for persons desiring a Hawaii product preference when submitting bids to self-certify as an alternative to registration on the Hawaii products list. Amends the definition of a Hawaii product by revising the product classes. (SD1)