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# A BILL FOR AN ACT

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RELATING TO HAWAII PRODUCTS PREFERENCE.

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

1       SECTION 1. The legislature finds that the preference for  
2       Hawai'i products was established to encourage the use of Hawai'i  
3       products by bidders to support local industries. However,  
4       contractors and subcontractors have indicated that it is common  
5       practice to source products locally due to availability and  
6       pricing, which levels the playing field for all vendors. The  
7       legislature further finds that the continued practice of  
8       decreasing offers by a ten or fifteen per cent classification  
9       preference could inflate industry rates, adding to the cost of  
10      construction to the State and taxpayers. Since contractors and  
11      subcontractors already use Hawai'i products, this incentive is no  
12      longer required, does not benefit the public, and would be  
13      contrary to the goal of increasing the economy, efficiency,  
14      effectiveness, and impartiality in the public works construction  
15      procurement process.

16      The legislature further finds, however, that the preference  
17      for Hawai'i products is still necessary and advantageous with



1 respect to the procurement of agricultural goods, value-added  
2 products, and commodities.

3 Accordingly, the purpose of this Act is to amend the  
4 procurement preference for Hawai'i products to only apply to the  
5 procurement of agricultural goods, value-added products, and  
6 commodities, subject to availability and policy considerations.

7 SECTION 2. Section 103D-1001, Hawaii Revised Statutes, is  
8 amended by amending the definition of "Hawaii input" to read as  
9 follows:

10 "'Hawaii input" means the part of the cost of a product  
11 that is attributable to production, manufacturing, or other  
12 expenses arising within the State. "Hawaii input" includes but  
13 is not limited to:

14 (1) The cost to mine, excavate, produce, manufacture,  
15 raise, ~~[or]~~ grow, assemble, or fabricate the materials  
16 in Hawaii;

17 (2) The added value of that portion of the cost of  
18 imported materials that is incurred after landing in  
19 Hawaii, including but not limited to other articles,  
20 materials, and supplies, added to the imported  
21 materials;



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

(4) Fixed overhead cost and amortization or depreciation cost, if any, for buildings, tools, and equipment, situated and located in Hawaii and used in the production or manufacturing of a product."

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

"§103D-1002 **Hawaii products.** (a) This section shall only apply to bids and proposals for agricultural goods, value-added products, and commodities. A purchasing agency shall review all specifications in a bid or proposal for purchase of Hawaii products where these products are available[-] and where procurement of these products will promote the State's goal of increasing agricultural production and sustainability.

(b) All invitations for bids and requests for proposals to which this section applies shall:

(1) Include a description of the products that are listed in the Hawaii products list established pursuant to this section, which may be used to complete the scope



1 of work specified in the invitation for bids or  
2 request for proposals; or

3 (2) Allow as part of the offer, self-certification that  
4 the Hawaii products qualify for preference;  
5 provided that the offer may be evaluated along with any other  
6 published criteria in the solicitation, including but not  
7 limited to considerations such as specific nutritional content  
8 or its equivalent, timing of delivery, quality or freshness, and  
9 past performance, if applicable.

10 All Hawaii products in any bid or request for proposal  
11 shall be made available for inspection, or additional  
12 information may be requested to verify that the Hawaii product  
13 meets the minimum specifications.

14 (c) All persons submitting bids or proposals to claim a  
15 Hawaii products preference shall designate in their bids which  
16 individual product and its price is to be supplied as a Hawaii  
17 product.

18 (d) Where a bid or proposal contains both Hawaii and non-  
19 Hawaii products, then for the purpose of selecting the lowest  
20 bid or purchase price only, the price or bid offered for a  
21 Hawaii product item shall be decreased by subtracting ten per



1 cent for class I Hawaii product items bid or offered, or fifteen  
2 per cent for class II Hawaii product items bid or offered. The  
3 lowest total bid or proposal, taking the preference into  
4 consideration, shall be awarded the contract unless the bid or  
5 offer provides for additional award criteria. The contract  
6 amount of any contract awarded, however, shall be the amount of  
7 the bid or price offered, exclusive of the preferences.

8 (e) Upon receipt and approval of application for Hawaii  
9 products preference, the administrator shall include within the  
10 Hawaii products list, the names of producers and manufacturers  
11 in the State who are authorized to supply locally manufactured  
12 soil enhancement products to state agencies under subsection  
13 (k). The administrator of the state procurement office shall  
14 maintain and distribute copies of the list to the purchasing  
15 agencies of the various governmental agencies.

16 (f) Any person not on the Hawaii products list desiring a  
17 preference pursuant to this section shall certify the Hawaii  
18 product when submitting a response to a solicitation; provided  
19 that the person certifies under penalty of sanctions that the  
20 offered Hawaii products meet the requirements for the  
21 preference.



1       The procurement officer may request additional information  
2       deemed necessary to qualify a product and shall have sole  
3       discretion in determining qualification for the preference.

4       Any offeror whose product is deemed not qualified for the  
5       preference may appeal by filing a written request for  
6       reexamination of facts to the procurement officer. Upon  
7       determining that the offeror is qualified for the preference,  
8       the procurement officer shall notify the administrator and the  
9       administrator shall place the offeror on the Hawaii products  
10      list.

11       (g) Solicitations shall contain a provision notifying  
12      offerors who request application of the preference that in the  
13      event of any change that materially alters the offeror's ability  
14      to supply Hawaii products, the offeror shall immediately notify  
15      the chief procurement officer in writing and the parties shall  
16      enter into discussions for the purposes of revising the contract  
17      or terminating the contract for convenience.

18       (h) Nothing in this section shall limit, restrict, or  
19      preclude a Hawaii product from any preferences, set-asides, or  
20      criteria that may be applied under section 103D-906, and this



1 section shall operate instead to mutually enhance the purpose of  
2 this section and section 103D-906.

3 (i) This section shall not apply [~~whenever its~~] when at  
4 least one of the following conditions is met:

5 (1) Its application will disqualify any governmental  
6 agency from receiving federal funds or aid[-]; or

7 (2) The solicitation is for public works construction.

8 (j) Any purchase made or any contract awarded or executed  
9 in violation of this section shall be void and no payment shall  
10 be made by any purchasing agency on account of the purchase or  
11 contract.

12 (k) For the purposes of this section, "soil enhancement  
13 product" means any nonchemical soil preparation, conditioner, or  
14 compost mixture designed to supplement aeration or add organic,  
15 green waste, or decaying matter to the soil; provided that the  
16 term does not include any plant fertilizer intended to stimulate  
17 or induce plant growth through chemical means. All state  
18 agencies shall include in their solicitations, when required,  
19 the soil enhancement products identified on the Hawaii products  
20 list pursuant to subsection (e).



1       (1) The department of accounting and general services  
2       shall provide written notice of offerors that are listed on the  
3       Hawaii products list established pursuant to this section any  
4       amendments to this section, including effective dates and dates  
5       of repeal to all vendors of construction products who are  
6       registered on the Hawaii products list with the state  
7       procurement office."

8       SECTION 4. Section 103D-1010, Hawaii Revised Statutes, is  
9       amended to read as follows:

10       "~~{}~~§103D-1010~~{}~~ Purchases from qualified community  
11       rehabilitation programs. (a) Any governmental body, without  
12       advertising or calling for bids, may purchase goods or services  
13       provided by qualified community rehabilitation programs serving  
14       persons with disabilities that have indicated an interest in  
15       supplying the goods or services and on an equitable basis may  
16       apportion the business among the interested programs; provided  
17       that the goods and services meet the specifications and needs of  
18       the purchasing agency and are purchased at a fair market price  
19       as determined by the appropriate public agency; and provided  
20       further that the programs comply with the following:





(1) Meet all of the requirements of a qualified community rehabilitation program under section 103D-1001; and

(2) Maintain a disabled to non-disabled employee ratio equal to or in excess of three-to-one for work hours of direct labor at all times on the work contracted.

(b) The purchasing agency shall:

(1) Receive and review proposals submitted by qualified community rehabilitation programs to provide goods or services and determine if they are suitable for purchase by the agency; and

(2) Negotiate the conditions and terms for the purchase, including the price of the offer, between the agency and the qualified community rehabilitation program; provided that the price of the offer shall not exceed the fair market price and there is assurance that the qualified community rehabilitation program proposal is in compliance with all administrative rules related to purchasing ~~[, and~~

~~(3) Ensure that any goods or service purchased from a qualified community rehabilitation program shall not~~



1           ~~be placed on the Hawaii products list under section~~  
2           ~~103D-1002]~~."

3           SECTION 5. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5           SECTION 6. This Act shall take effect upon its approval.



**Report Title:**

Procurement; Hawaii Product Preference; Agricultural Goods;  
Value-Added Products; Commodities

**Description:**

Amends the procurement preference for Hawaii products to only  
apply to agricultural goods, value-added products, and  
commodities. (SD2)

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not legislation or evidence of legislative intent.*

