

ACT 186

H.B. NO. 3300

A Bill for an Act Relating to the Hawaii Public Procurement Code.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 8, Special Session Laws of Hawaii 1993, is amended by adding three new parts to the chapter established in section 2 of the Act to read as follows:

“PART X. PREFERENCES

§ **-1001 Definitions.** As used in this part, unless the context clearly requires otherwise:

“Hawaii products” means products that are mined, excavated, produced, manufactured, raised, or grown in the State where the input constitutes no less than twenty-five per cent of the manufactured cost; provided that:

- (1) Where the value of the input constitutes twenty-five per cent or more, but less than fifty per cent, of the manufactured cost, the product shall be classified as class I;
- (2) Where the value of the input constitutes fifty per cent or more, but less than seventy-five per cent, of the manufactured cost, the product shall be classified as class II; and
- (3) Where the value of the input constitutes seventy-five per cent or more of the manufactured cost, the product shall be classified as class III.

“Hawaii software development business” means any person, agency, corporation, or other business entity with its principal place of business or ancillary headquarters located in the State and that proposes to obtain eighty per cent of the labor for software development from persons domiciled in Hawaii.

"Office paper" includes computer paper, bond paper, ledger paper, xerographic copier paper, envelopes, and other related types of paper on which printing, writing, or drawing is intended.

"Person" means every individual, partnership, firm, society, unincorporated association, joint venture, group, hui, joint stock, company, corporation, trustee, personal representative, trust estate, decedent's estate, trust, or other entities, whether the persons are doing business for themselves or in any agency or fiduciary capacity.

"Post-consumer material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item, and is a part of the broader category of recovered material.

"Printed material" includes business forms, stationery, business cards, brochures, reports, publications, advertising and promotional collateral, and other related materials, including reports, publications, and related materials commissioned as part of any professional services contract.

"Produced or manufactured" includes the processing, developing, and making of a thing into a new article with a distinct character and use through the application of input within the State including Hawaii products, labor, skill, or other services. "Produced or manufactured" does not include the mere assembling or putting together of non-Hawaii products or material.

"Products" include materials, manufactures, supplies, merchandise, goods, wares, products, and foodstuffs.

"Recovered material" means waste material and by-products that have been recovered or diverted from solid waste. "Recovered material" does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

"Software development" means any work related to feasibility studies, system requirements analysis, system design alternatives analysis, system external specifications, system internal specifications, programming, testing, debugging, or implementation for an electronic data processing system.

§ **-1002 Hawaii products.** (a) In any expenditure of public funds, a purchasing agency shall review all purchase specifications in a bid or proposal for purchase from the Hawaii products list where these products are available; provided that the products:

- (1) Meet the minimum specifications and the selling price f.o.b. jobsite;
- (2) Unloaded including applicable general excise tax and use tax does not exceed the lowest delivered price in Hawaii f.o.b. jobsite; and
- (3) Unloaded, including applicable general excise tax and use tax do not exceed the lowest delivered price of a similar non-Hawaii product by more than:
 - (A) Three per cent where class I Hawaii products are involved;
 - (B) Five per cent where class II Hawaii products are involved; or
 - (C) Ten per cent where class III Hawaii products are involved.

(b) Where a package bid or offer contains both Hawaii and non-Hawaii products, then for the purpose of selecting the lowest bid or purchase price only, the price bid or offered for a non-Hawaii product item shall be increased by adding thereto: three per cent, five per cent, or ten per cent where similar class I, class II, or class III Hawaii product items have been bid or offered by another party pursuant to this section. The lowest total bid or offer, taking the preferences into consideration, shall be awarded the contract unless the bid or offer provides

for additional award criteria. The contract amount of any contract awarded, however, shall be the amount of the bid or price offered, exclusive of the preferences.

(c) All persons submitting bids or offers based on non-Hawaii products to any purchasing agency shall designate in their bids which individual product is to be supplied as a non-Hawaii product. All bidders shall list the price of the non-Hawaii product in their bid.

(d) In all public works and any repair or maintenance contracts, a purchasing agency or any person employed by a purchasing agency, including architects and engineers, shall describe in all specifications, products, and their established classes listed in the Hawaii products list established under this section which may be used, where the products are available and meet the minimum specifications.

(e) The policy office shall adopt rules in accordance with chapter 91 for the establishment and administration of a Hawaii products list. The administrator of the state procurement office shall maintain and distribute copies of the list to the purchasing agencies of the various governmental agencies.

(f) This section shall not apply whenever its application will disqualify any governmental agency from receiving federal funds or aid.

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

(h) Any person, or any officer or employee of any person, who violates this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both. In addition, any person who is awarded a contract or given an order for purchase as a result of misrepresentation in the person's bid or offer or makes a claim in the person's bid or offer that the person will purchase Hawaii products, but fails to do so:

- (1) Shall be fined the difference between the price the person would have paid for Hawaii products and the actual price; and
- (2) Shall not be awarded any contract or be given any order for purchase or be eligible for bidding until one year after the date of the payment of fines.

§ -1003 Printing, binding, and stationery work. (a) All printing, binding, and stationery work for the State or any county shall be performed within the State, including all preparatory work, presswork, bindery work, and any other production-related work, and all requests for bids or contracts for this work shall so stipulate; provided that whenever it is established that this work cannot be performed within the State or that the lowest price for which the work can be procured within the State exceeds the bid or charge of a mainland manufacturer of the item by fifteen per cent, the work or any part thereof so affected may be performed outside the State.

(b) No payment shall be made by the State or any county for printing, binding, or stationery work unless it appears that the work was done within the State or was authorized to be done outside the State pursuant to this section. In addition, any manufacturer violating a stipulation in a bid or contract that all work will be performed within the State shall be subject to a civil penalty in an amount not to exceed the bid or contract price to be collected by a civil action filed by the attorney general on behalf of the State.

(c) The policy office shall adopt rules to implement this section.

§ -1004 Reciprocity. (a) To ensure fair and open competition for Hawaii businesses engaged in contracting with other states, the chief procurement officer may impose a reciprocal preference against bidders from those states

which apply preferences. The amount of the reciprocal preference shall be equal to the amount by which the non-resident preference exceeds any preference applied by this State.

In determining whether a bidder qualifies as a resident bidder, the definition used by the other state in applying a preference shall apply.

(b) The policy office shall adopt rules to implement this section.

(c) This section shall not apply to any transaction if the provisions of the section conflict with any federal laws.

§ **-1005 Recycled products.** (a) To encourage the use of recycled products, contracts shall be awarded to the lowest responsible and responsive bidders, with preference being given to the products containing recycled material. The policy office shall adopt rules in accordance with chapter 91 governing preference for recycled products. The rules shall establish percentages of preference and the method of determining the contents of recycled material to qualify various products for preference.

(b) The state procurement office, with the assistance of the office of solid waste management in the department of health as provided in section 342G-42, shall develop a recycled product procurement program that shall require state purchasing agencies and urge county purchasing agencies to:

- (1) Apply preference to the purchase of products with recycled content before purchasing products without any recycled content;
- (2) Be consistent with applicable federal specification standards incorporated in Executive Order No. 12873, signed by the President of the United States on October 20, 1993, and any subsequent amendments to that order; and
- (3) Ensure, to the maximum extent economically feasible, the purchase of materials that may be recycled or reused when discarded, and to avoid the purchase of products deemed environmentally harmful.

(c) In addition to the requirements for the purchase of office paper and printed material under subsection (e), and when appropriate, purchase specifications shall include, but not be limited to, paper, paper products, glass and glass by-products, plastic products, mulch and soil amendments, tires, batteries, oil, paving materials and base, subbase, and pervious backfill materials. Paving materials to be considered shall include, but are not limited to, asphalt, tires, crushed concrete for base, subbase, and paving materials. The standards and specifications shall provide for the use of recycled materials and shall not reduce the quality standards for highway and road construction.

(d) The chief procurement officers shall periodically review their specifications to determine whether discrimination against procured goods with recycled contents exists and shall revise these specifications to eliminate any such discrimination.

(e) When purchasing office paper and printed material, state purchasing agencies shall, and county purchasing agencies are urged to, purchase only office paper and printed material with recycled content, except when statutory, regulatory, or contractual requirements preclude the purchase of office paper or printed material with recycled contents of the same type and quantity as the office paper or printed material without recycled content.

§ **-1006 Software development businesses.** (a) In any expenditure of public funds for software development, the use of Hawaii software development businesses shall be preferred. Where a package bid or response to a request for proposal contains both Hawaii and non-Hawaii software development businesses,

then for the purpose of selecting the lowest bid or purchase price only, the bid or offer by a non-Hawaii software developmental center shall be increased by a preference percentage pursuant to rules adopted in accordance with chapter 91.

(b) The policy office shall adopt rules to implement this section.

(c) This section shall not apply when precluded by federal requirements for competitive bidding.

PART XI. FEDERAL AND STATE SURPLUS PROPERTY

§ -1101 Definitions. As used in this part, unless the context clearly requires otherwise:

“Personal property” means all tangible goods, including equipment, materials and supplies, except land, buildings, and improvement to the land.

“Surplus personal property” means any personal property that no longer has any use to this State or personal property acquired from the United States government. “Surplus personal property” includes obsolete, scrap, and excess personal property that has completed its useful life cycle.

§ -1102 State agency for surplus property. The state procurement office shall be the state agency for federal and state surplus personal property unless otherwise specified in this chapter or rules adopted pursuant to chapter 91.

The administrator of the state procurement office shall appoint and prescribe the duties of a surplus property director and other personnel pursuant to chapters 76, 77, and this chapter.

§ -1103 Authority and duties. The state procurement office may:

- (1) Acquire from the United States under and in conformance with section 203(j) of the Federal Property and Administration Services Act of 1949, as amended, hereinafter referred to as the “Federal Act”, any personal property under the control of any executive agency of the United States which has been determined to be surplus property under the Federal Act, warehouse the property, and distribute the property within the State to eligible recipients, as set forth in the Federal Act;
- (2) Receive applications from eligible health and educational institutions for the acquisition of federal and state surplus personal property, investigate, review, make recommendations and otherwise assist, supervise, and direct the processing of these applications for acquisition of federal personal property of the United States under section 203(k) of the Federal Act and state personal property under rules adopted by the policy office;
- (3) Appoint advisory boards or committees;
- (4) Take any action including making certifications, expenditures, contracts, agreements, and other undertakings, necessary in connection with the disposal of personal property hereunder;
- (5) Act as a clearinghouse of information for the eligible recipients referred to in paragraph (1) and other public and private nonprofit institutions, organizations, and agencies eligible to acquire federal or state surplus personal property; locate personal property available for acquisition from the United States or state agencies; ascertain the terms and conditions under which the property may be obtained; receive requests from eligible recipients, institutions, organizations, agencies, and counties and transmit to them all available information

- in reference to the property; and assist eligible recipients, institutions, organizations, agencies, and counties in every way possible in the consummation of acquisitions or transactions hereunder;
- (6) Cooperate to the fullest extent, consistent with the provisions of the Federal Act, with the departments or agencies of the United States; file a state plan of operation, operate in accordance therewith, and take any action that may be necessary to meet the minimum standards prescribed in the Federal Act; make any reports that the United States may from time to time require; and comply with the laws and regulations of the United States governing the allocation, transfer, use, or accounting for property donated or to be donated to the State;
 - (7) Purchase from any other state the services of the agency responsible for the distribution of surplus property and sell to any other state the services of the state procurement office to ensure and promote the effective administration of this chapter and of the surplus property program. The purchase or sale of services shall be made on a fee-for-service or other equitable and reasonable basis; provided that the fee or other basis of payment for services purchased or sold shall be computed to include the costs of salaries, travel, supplies, and equipment and any other item properly related to the cost of the service; and
 - (8) Make certifications, take action, make expenditures, and enter into contracts and undertakings for and in the name of the State (including cooperative agreements with any federal agencies providing for utilization by and exchange between them of the property, facilities, personnel, and services of each by the other), require reports and make investigations that the agency may deem necessary or proper for the administration of this part, or that may be required by law or regulation of the United States in connection with the disposal of real property and the receipt, warehousing, and distribution of personal property received by the agency from the United States.

§ **-1104 Delegation of authority; bond.** The administrator of the state procurement office may:

- (1) Delegate to any employee any power and authority deemed reasonable and proper for the effective administration of this part; and
- (2) Bond any employee of the agency handling money, signing checks, or receiving or distributing property from the United States or state agencies under authority of this part.

§ **-1105 Authorized donee representatives.** Any other law to the contrary notwithstanding, the governing board, or in case there is none, the chief procurement officer or the head of a purchasing agency, or their respective designees, by written order or resolution, may confer upon any officer or employee the continuing authority to secure the transfer, to the state procurement office or the purchasing agency, of surplus property under this part through the state agency for surplus property under section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended, and rules adopted by the policy office, and to obligate the State or county and its funds to the extent necessary to comply with the terms and conditions of the transfers. The authority conferred upon the officer or employee by the order or resolution shall remain in effect

until the order or resolution is duly revoked and written notice of the revocation is received by the state agency for surplus property.

§ **-1106 Transfer charges.** Any charges or fees assessed by the surplus property director shall be limited to those reasonably related to the costs of care and handling with respect to the acquisition, receipt, warehousing, distribution, or transfer. The charges and fees shall be limited to the reasonable administrative costs the surplus property director incurred in effecting transfer.

§ **-1107 Revolving fund.** There shall be in the state treasury a surplus federal property revolving fund, which shall be maintained in an amount adequate to defray the costs of procuring, storing, handling, and disposing of surplus property donated to the State under any federal act or rules adopted by the policy office making surplus federal and state property available.

PART XII. INVENTORY MANAGEMENT; STATE AND COUNTY PROPERTY

§ **-1201 Definitions.** As used in this part, unless the context clearly requires otherwise:

“Administrator of the state procurement office” means the chief procurement officer for the governmental bodies of the executive branch of the State, other than the University of Hawaii, department of education, the several counties, and those governmental bodies administratively attached thereto.

“Excess property” means any property which has a remaining useful life but which is no longer required by the using agency in possession of the property.

“Expendable property” means all property other than nonexpendable property.

“Nonexpendable property” means all property having a unit cost and useful life which is set by rules adopted by the policy office.

“Property” means all goods, including equipment, materials, supplies, land, buildings, and other improvements to the land, also non-tangible items such as patents, inventions, and copyrights.

“Surplus property” means any property that no longer has any use to the State. “Surplus property” includes obsolete, scrap, and nonexpendable property that has completed its useful life cycle.

§ **-1202 Rules.** The policy office shall adopt rules in accordance with chapter 91 governing:

- (1) The management of properties during their entire life cycle;
- (2) The classes of property, whether expendable or nonexpendable;
- (3) The action to be taken in case of lost, stolen, damaged, unserviceable, or unsuitable property;
- (4) The sale, lease, trade-in, or disposal of surplus property by public auction, competitive sealed bidding, or other appropriate method designated by rules; provided that no employee of the owning or disposing agency shall be entitled to purchase this property; and
- (5) The transfer of excess property.

§ **-1203 Administrator of the state procurement office; duties.** The administrator of the state procurement office shall:

- (1) Perform a periodic review of the inventory management system of all governmental bodies;

- (2) Enforce rules adopted by the policy office governing the management of state property;
- (3) Assist, advise, and guide governmental bodies in matters relating to the inventory management of state property; and
- (4) Establish, manage, and maintain a centralized property inventory record file for each department, board, commission, or office of the State having the care, custody, or control of any state property, other than the University of Hawaii, the department of education, the several counties, and those governmental bodies administratively attached thereto, unless otherwise specified in this chapter or in rules adopted pursuant to chapter 91.

§ **-1204 Others' responsibilities.** The head of the department, or the head of any board, commission, agency, bureau, or office of the State shall be responsible for the accountability, protection, maintenance, and proper use of all state property pertaining to their office or department, whether they issue receipts for the same or not, and shall not transfer their responsibility to a successor during short periods or absence unless with the written consent of the governor. Shortages occurring during the administration of one person shall not be the responsibility of the person's successor. The new officer shall be responsible only for the property the office actually receives or for which the officer issues a receipt.

§ **-1205 Internal control.** The head of the department, or the head of any board, commission, agency, bureau, or office of the State and any county having the care, custody, or control of any state property is responsible for maintaining an adequate system of internal control to ensure the accountability, safekeeping, maintenance, and proper use of state property and verify that the internal control system continues to function effectively as designed.

§ **-1206 Annual inventory reporting by state officers.** The chief procurement officers for their respective jurisdictions, the administrative heads of the executive departments, and all other persons, offices, and boards of a public character which are not by law under the control and direction of any of the officers specifically named in this section, before September 16 of each year, shall prepare and file with the administrator of the state procurement office an annual inventory return of all state property in the possession, custody, control, or use of the officer making the return, or of the department or office of the government over which the officer presides. Any officer, agent, or employee serving in a department or under a returning officer shall file an annual inventory return to the department head or the returning officer. The officer making the return shall similarly file a copy with the administrator of the state procurement office. The annual inventory return shall contain the following:

- (1) A summary and list by detailed item description and carrying value of all nonexpendable state property on hand as of July 1 of the year for which the return is made;
- (2) A summary and list by detailed item description and carrying value of all nonexpendable state property acquired and disposed of during the year elapsed since the return made as of the preceding July 1;
- (3) Summary dollar values of expendable property on hand as of July 1 of the year for which the return is made; and
- (4) A sworn statement certifying the information on the return, property listings, and carrying values provided with the return to be full, true,

and correct to the best knowledge, information, and belief of the officer making the return.

§ **-1207 Annual inventory reporting by county mayors to administrator of the state procurement office.** Each county mayor, before September 16 of each year, shall prepare and file with the administrator of the state procurement office an annual inventory return of all state property in the use, custody, or possession for the time being of the county or any of its officers. The annual inventory return shall contain the following:

- (1) A summary and list by detailed item description and carrying value of all nonexpendable state property on hand as of July 1 of the year for which the return is made;
- (2) A summary and list by detailed item description and carrying value of all nonexpendable state property disposed of during the year elapsed since the return made as of the preceding July 1; and
- (3) A sworn statement certifying the information on the return, property listings, and carrying values provided with the return to be full, true, and correct to the best knowledge, information, and belief of the officer making the return.

§ **-1208 Annual inventory reporting by county officers to council.** Every officer, head of department, agent, employee, and other person in the employ of the county, having in their custody or under their control or using property belonging to the county, each year within forty-five days following the close of the county's fiscal year, shall prepare and file with the council of the county an annual inventory return of all county property in the possession, custody, control, or use of the officer, head of department, agent, employee, or other person making the annual inventory return, or of the offices or departments over which the officer presides. The annual inventory return shall contain the following:

- (1) A summary and list by detailed item description and carrying value of all county property on hand as of the close of the county's fiscal year for which the return is made;
- (2) A summary and list by detailed item description and carrying value of all county property acquired and disposed of during the year elapsed since the return made as of the preceding close of the fiscal year; and
- (3) A sworn statement certifying the information on the return, property listings, and carrying values provided with the return to be full, true, and correct to the best knowledge, information, and belief of the officer making the return.

§ **-1209 Authority to withhold salary.** The administrator of the state procurement office and the director of finance of each county shall ascertain if inventories have been filed as required by sections -1206 and -1208 respectively. If any officer, head of department, agent, employee, or other person fails to file the required inventory within the time prescribed, the administrator of the state procurement office or director shall withhold the salary or wage due the officer, head of department, agent, employee, or other person until the inventory is filed; provided that at the discretion of administrator of the state procurement office or director the delay in filing the required inventory return within the time prescribed was for good cause.

§ **-1210 Penalty; jurisdiction.** Any officer, member of a public board, assessor, or other person who fails to perform any of the duties imposed upon the person by this part shall be fined no more than \$500 or imprisoned not more than six months. District judges shall have jurisdiction to hear and determine all cases of alleged violations of this part committed within the circuit for which the judge was appointed.

§ **-1211 Forms for annual inventory return.** The administrator of the state procurement office shall prepare and print a general form upon which the inventories required under sections -1206 and -1207 shall be made, and before June 1 of each year, shall mail to each officer required under sections -1206 and -1207 to file an annual inventory return, as many forms as necessary to enable the officer to make a proper return. The administrator of the state procurement office, at the same time, shall call to the attention of the officer, in writing, the requirements of this part.

§ **-1212 Duties of the State and county.** (a) The administrator of the state procurement office shall examine each inventory return filed as required by sections -1206 and -1207 and the director of finance of each county shall examine each inventory return filed as required by section -1208, and they shall add, if any, items of property which should have been included with their full cash value, correct and alter the valuations as may be required by truth and accuracy, and enter in one or more books to be kept for the purpose and to be available at all times for inspection by any taxpayer, all of the property and valuations named in the inventories, as added to, revised, corrected, and classified for convenience.

(b) The administrator of the state procurement office or county director of finance shall charge the amounts of the inventories to proper accounts on the general ledgers of the State or county so that the values of the properties shall be shown and appear at all times in the balance sheet of the books of the State or county.

(c) The director of taxation at all times shall advise or assist the administrator of the state procurement office in the valuation of all state property.

(d) The county engineers shall advise or assist the director of finance of their respective counties as to the valuation of the property belonging to the county.

§ **-1213 Sale of produce, etc.; disposition of proceeds; exceptions.** Except as otherwise provided by law or rules adopted by the governor, the sale by any governmental office, department, board, establishment, institution, or agency (hereafter referred to as "agency") of domestic animals such as hogs, poultry, etc.; of the produce of animal husbandry; of fruits, vegetables, and other agricultural produce; of manufactured articles; or the like (hereafter referred to as "products") where the raising, production, or manufacture of the same is a part of the usual or authorized activities of the agency, may be made by the agency in a manner to be determined by the head of the agency. The proceeds of the sales, where not otherwise provided by law, shall be paid into the general fund as state realizations. If any of the products are sold from one agency to any other agency, a reasonable sale price may be paid to the selling agency by the purchasing agency and credited to the current expense appropriation of the selling agency, subject to re-expenditure during the fiscal or other period in which the current expense appropriation is available, and any unexpended balance shall lapse at the end of the period. This section shall not apply to public school activities, such as the sale of food in public school cafeterias, the proceeds of which are not considered as

public funds payable into the treasury of the State, nor shall the same apply to activities of the University of Hawaii. Nothing in this section shall be deemed to prohibit a transfer from one agency to another of the products without charge, if so ordered by the selling agency.

§ -1214 Proceeds. Except as otherwise provided in section -1213 or by any other law, all moneys received from the sale of any state property by any office, department, board, establishment, institution, or other agency shall be deposited with the director of finance to the credit of the general fund where the operation of the agency is financed from the general fund; provided that where any state property has been purchased with moneys in a special fund, the proceeds of the sale shall be paid into or credited to the special fund. In any case of doubt as to the application of any such proceeds, the administrator of the state procurement office shall determine the fund or appropriation to which the proceeds shall be credited pursuant to this section, and the administrator's decision shall be final."

SECTION 2. Section 26-6, Hawaii Revised Statutes, is amended to read as follows:

"§26-6 Department of accounting and general services. (a) The department of accounting and general services shall be headed by a single executive to be known as the comptroller.

(b) The department shall preaudit and conduct after-the-fact audits of the financial accounts of all state departments to determine the legality of expenditures and the accuracy of accounts; report to the governor and to each regular session of the legislature as to the finances of each department of the State; [manage the inventory, equipment, surplus property, insurance, and centralized purchasing programs of the State;] administer the state risk management program; establish and manage motor pools; manage the preservation and disposal of all records of the State; undertake the program of centralized engineering and office leasing services, including operation and maintenance of public buildings, for departments of the State; undertake the functions of the [territorial or] state surveyor; and establish, analyze, and enforce accounting and internal control systems.

(c) The King Kamehameha celebration commission [is] shall be placed within the department of accounting and general services for administrative purposes. The functions, duties, and powers, subject to the administrative control of the comptroller, and the composition of the commission shall be as heretofore provided by law.

(d) The functions and authority heretofore exercised by the comptroller, board of commissioners of public archives, the archivist, the disposal committee, and the insurance management, surplus property management, and central purchasing functions of the bureau of the budget and the nonhighway functions of the department of public works as heretofore constituted are transferred to the department of accounting and general services established by this chapter."

SECTION 3. Section 102-6, Hawaii Revised Statutes, is amended to read as follows:

"§102-6 Deposits of legal tender, etc., to accompany bid. (a) All bids shall be accompanied by a deposit of legal tender or by a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by, a bank, savings institution, or

credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, in a sum not less than five per cent of the amount bid, payable at sight or unconditionally assigned to the officer advertising for tenders; provided that when the amount bid exceeds \$50,000, the deposit shall be in a sum not less than \$2,500 plus two per cent of the amount in excess of \$50,000.

If the bid deposit is in the form of a surety bond, it shall be issued in accordance with subsection (b).

(b) A bid may be accompanied by a surety bond executed to the officer calling for bids by the bidder as principal and by any [corporation organized for the purpose of becoming surety on bonds, authorized under the laws of the United States or of the State to act as surety, and doing business in the State under the laws of the United States or of the State, if a foreign corporation, and under the laws of the State, if a Hawaii corporation, as surety,] bonding company listed in the United States Treasury List; provided that the bond furnished by any surety listed shall not exceed the bonding capacity rating of that surety on the Treasury List; in a [penal] sum of equal amount, conditioned upon the bidder entering into the contract and furnishing satisfactory security within ten days after the award or within any further time as the officer may allow, if the bidder is awarded the contract."

SECTION 4. Section 103D-202, Hawaii Revised Statutes, is amended to read as follows:

"§103D-202 Authority and duties of the policy office. Except as otherwise provided in this chapter, the policy office shall have the authority and responsibility to adopt rules, consistent with this chapter, governing the procurement, management, control, and disposal of any and all goods, services, and construction. All rules shall be adopted in accordance with chapter 91[.]; provided that the policy office shall have the power to issue interim rules by procurement directives, which shall be exempt from the public notice, public hearing, and gubernatorial approval requirements of chapter 91. The interim rules shall be effective for not more than eighteen months. The policy office shall consider and decide matters of policy within the scope of this chapter including those referred to it by a chief procurement officer. The policy office shall have the power to audit and monitor the implementation of its rules and the requirements of this chapter, but shall not exercise authority over the award or administration of any particular contract, or over any dispute, claim, or litigation pertaining thereto."

SECTION 5. Section 342G-42, Hawaii Revised Statutes, is amended to read as follows:

"[§342G-42]] [Agency] Office responsibilities for recycled products procurement. [(a) The department of accounting and general services, with the assistance of the office, shall develop the recycled product procurement program.] The office, in coordination with the [department of accounting and general services,] state procurement office, shall ensure that all state [agencies] and county purchasing agencies are provided with the information and technical assistance necessary to [establish recycling] promote the procurement [programs. The department of accounting and general services shall periodically review its specifications to determine whether discrimination against procured] of goods with recycled-content [exists and shall revise these specifications to eliminate any discrimination.

(b) Pursuant to section 103-24.5, the comptroller shall establish rules pursuant to chapter 91 governing procurement preference for recycled products.

(c) The department of accounting and general services and other state agencies, where necessitated by technical expertise, shall review and establish purchase specifications to aid in the procurement of recycled goods. Where appropriate, purchase specifications shall include, but not be limited to, paper, paper products, plastics, sewage sludge, compost, tires, batteries, oil, paving materials and base, subbase, and pervious backfill materials. Paving materials to be considered shall include, but are not limited to, asphalt, tires, crushed concrete for base, subbase and paving materials. The standards and specifications shall provide for the use of recycled materials and shall not reduce the quality standards for highway and road construction].”

SECTION 6. Act 8, Special Session Laws of Hawaii 1993, is amended by amending subsection (b) of section -102, of the chapter established in section 2 of the Act, to read as follows:

“(b) This chapter shall apply to every expenditure of public funds irrespective of their source by a governmental body as defined herein, under any contract; provided that the expenditure of federal assistance moneys shall be in accordance with federal requirements. This chapter shall not apply to:

- (1) Grants, subsidies, or purchases of service made pursuant to chapter 42D;
- (2) Employment agreements or collective bargaining agreements; [and]
- (3) [Grants or contracts between the State and counties or other governments except as provided by part VIII.] The purchase of goods, services, or construction from any other governmental body, other state governments, or the federal government, other than the University of Hawaii bookstores;
- (4) Permanent settlements, subsidies, or other claims that must be paid by law;
- (5) Contracts for expert witnesses for potential and actual litigation of legal matters involving the State, its agencies, and its officers and employees, including administrative quasi-judicial proceedings;
- (6) Works of art for museum and public display;
- (7) Published books, maps, periodicals, and technical pamphlets;
- (8) Meats and foodstuffs for the Kalaupapa settlement; and
- (9) Goods purchased by the State for commercial resale to the public.

Nothing in this chapter or rules adopted hereunder shall prevent any governmental body from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.”

SECTION 7. Act 8, Special Session Laws of Hawaii 1993, is amended by amending the definition of “professional services” of section -104, of the chapter established in section 2 of the Act, to read as follows:

““Professional services” means those services within the scope of the practice of architecture, landscape architecture, professional engineering, land surveying, real property appraisal, law, medicine, accounting, dentistry, or any other practice defined as professional by the laws of this State[.] or the professional and scientific occupation series contained in the United States Office of Personnel Management’s Qualifications Standards Handbook.”

SECTION 8. Act 8, Special Session Laws of Hawaii 1993, is amended by amending section -203, of the chapter established in section 2 of the Act, to read as follows:

“§ -203 **Chief procurement officers.** (a) The chief procurement officer for each of the following state entities [and the several counties] shall be:

- (1) The judiciary—the administrative director of the courts;
- (2) The senate—the president of the senate;
- (3) The house of representatives—the speaker of the house of representatives;
- (4) The office of Hawaiian affairs—its board of trustees;
- [(5) The several counties—the respective finance directors of the several counties;
- (6)] (5) The University of Hawaii—the president of the University of Hawaii;
- [(7)] (6) The department of education—the superintendent of education; and
- [(8)] (7) The remaining departments of the executive branch of the State and all governmental bodies administratively attached to them—the administrator of the procurement office of the department of accounting and general services.

(b) The chief procurement officers for each of the several counties shall be:

- (1) The executive branch—the respective finance directors of the several counties; and
- (2) The legislative branch—the respective chairpersons of the councils of the several counties;

provided that the chief procurement officers designated under paragraphs (1) and (2) shall not exercise their powers or duties over contracting in a manner contrary to the respective county’s charter, ordinances, or rules adopted in accordance with chapter 91.

(c) For purposes of applying this chapter to the judiciary, houses of the legislature, office of Hawaiian affairs, department of education, University of Hawaii, remaining departments of the executive branch and all governmental bodies administratively attached to them, and the several counties, unless otherwise expressly provided, “State” shall mean “judiciary,” “state senate,” “state house of representatives,” “office of Hawaiian affairs,” “department of education,” “University of Hawaii,” “executive branch,” and “county,” respectively.”

SECTION 9. Act 8, Special Session Laws of Hawaii 1993, is amended by amending subsection (b) of section -302, of the chapter established in section 2 of the Act, to read as follows:

“(b) An invitation for bids shall be issued[,] and shall include a purchase description and all contractual terms and conditions applicable to the procurement. If the invitation for bids is for construction, it shall specify that all bids include the name of each person or firm to be engaged by the bidder as a joint contractor or subcontractor in the performance of the contract and the nature and scope of the work to be performed by each. Construction bids [which] that do not comply with this requirement may be accepted if the chief procurement officer or rules of the policy office conclude that acceptance is in the best interest of the public[,] and the value of the work to be performed by the joint contractor or subcontractor is equal to or less than one per cent of the total bid amount.”

SECTION 10. Act 8, Special Session Laws of Hawaii 1993, is amended by amending section -305, of the chapter established in section 2 of the Act, to read as follows:

“§ -305 **Small purchases.** Any procurement of

(1) Less than \$10,000 for [supplies] goods or services; or

(2) Less than \$25,000 for construction;

may be made in accordance with procedures set forth in rules adopted by the policy office [which] that are designed to ensure administrative simplicity and as much competition as is practicable; provided that multiple expenditures shall not be created at the inception of a transaction or project so as to evade the requirements of this chapter; and provided further that procurement requirements shall not be artificially divided or parceled so as to constitute a small purchase under this section.”

SECTION 11. Act 8, Special Session Laws of Hawaii 1993, is amended by amending subsections (a) and (b) of section -323, of the chapter established in section 2 of the Act, to read as follows:

“(a) Unless the policy office determines otherwise by rules, bid security shall [only] be required only for construction contracts to be awarded pursuant to sections -302 and -303 and when the price of the contract is estimated by the procurement officer to exceed [\$100,000] \$25,000 or, if the contract is for goods or services, the purchasing agency secures the approval of the chief procurement officer. Bid security shall be a bond provided by a surety company authorized to do business in the State, or the equivalent in cash, or otherwise supplied in a form specified in rules.

(b) Bid security shall be in an amount equal to at least five per cent of the amount of the bid[, provided that when the amount bid exceeds \$50,000, the bid security shall be in a sum not less than \$2,500, plus two per cent of the amount in excess of \$50,000. Notwithstanding the foregoing, if the contract is for construction, then the amount of the bid security shall be in a sum not less than \$3,500, plus two per cent of the amount in excess of \$100,000].”

SECTION 12. Act 8, Special Session Laws of Hawaii 1993, is amended by amending the definition of “local public procurement unit” in section -801, of the chapter established in section 2 of the Act, to read as follows:

““Local public procurement unit” means any county of the State or public agency of any county, public authority, educational, health, or other institution, and to the extent provided by law, any other entity which expends public funds for the procurement of [supplies,] goods, services, and construction.”

SECTION 13. Act 8, Special Session Laws of Hawaii 1993, is amended by amending section -802, of the chapter established in section 2 of the Act, to read as follows:

“§ -802 **Cooperative purchasing authorized.** A public procurement unit may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of [supplies,] goods, services, or construction with one or more public procurement units [or], external procurement activities, or nonprofit private health and human services organizations pursuant to rules adopted by the policy office and an agreement entered into between the

participants. The cooperative purchasing may include, but [is] shall not be limited to, joint or multi-party contracts between public procurement units and open-ended state public procurement unit contracts which are made available to local public procurement units."

SECTION 14. Act 8, Special Session Laws of Hawaii 1993, is amended by amending section -803, of the chapter established in section 2 of the Act, to read as follows:

"§ -803 **Sale, acquisition, or use of [supplies] goods by a public procurement unit.** Any public procurement unit may sell to, acquire from, or use any [supplies] goods belonging to another public procurement unit or external procurement activity independent of the requirements of [part] parts III and [the supply management provisions of chapter 106.] XII."

SECTION 15. Act 8, Special Session Laws of Hawaii 1993, is amended by amending section -804, of the chapter established in section 2 of the Act, to read as follows:

"§ -804 **Cooperative use of [supplies] goods or services.** A public procurement unit may enter into an agreement, independent of the requirements of [part] parts III and [the supply management provisions of this chapter and the supply management provisions of chapter 106,] XII. with any other public procurement unit [or], external procurement activity, or nonprofit private health and human services organizations for the cooperative use of [supplies] goods or services under the terms agreed upon between the parties[.] pursuant to rules adopted by the policy office."

SECTION 16. Act 8, Special Session Laws of Hawaii 1993, is amended by amending section -809, of the chapter established in section 2 of the Act, to read as follows:

"§ -809 **Review of procurement requirements.** [To the extent possible, the] The chief procurement officer may collect information concerning the type, cost, quality, and quantity of commonly used [supplies,] goods, services, or construction being procured or used by state public procurement units. The chief procurement officer may also collect this information from local public procurement units. The chief procurement officer may make available all such information to any public procurement unit upon request."

SECTION 17. Act 8, Special Session Laws of Hawaii 1993, is amended by amending the definition of "small business" in section -901, of the chapter established in section 2 of the Act, to read as follows:

"“Small business” means a United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation. The policy office shall adopt rules establishing [a] more detailed criteria for defining small business, including the number of employees [and the dollar volume of business].”

SECTION 18. Act 8, Special Session Laws of Hawaii 1993, is amended by amending section 15 to read as follows:

“SECTION 15. Section 128-10, Hawaii Revised Statutes, is amended to read as follows:

“§128-10 **Other powers.** The governor further, [may] irrespective of the existence of a civil defense emergency period[:], may:

- (1) [Cooperation with federal agencies in civil defense matters, etc.] Cooperate with the President and the heads of the armed forces, and the civil defense agency of the United States, and with the officers and agencies of other states in matters pertaining to the civil defense of the State and nation and the incidents thereof, and take any measures which the governor may consider proper to carry into effect any request of the President or the appropriate federal officers and agencies, for any action looking to civil defense[:].;
- (2) [Lend-lease.] Lease, lend, or otherwise furnish, on such terms and conditions as the governor may consider necessary to promote the public welfare and protect the interest of the State, any real or personal property of the state government or its political subdivisions, to the President, the heads of the armed forces, or to the civil defense agency of the United States[:].;
- (3) [Agreements with the federal government and other states.] On behalf of the State enter into mutual aid agreements or compacts with the federal government and with other states. The agreements or compacts shall be limited to civil defense. It may be provided in an interstate compact, and the governor with the advice and consent of the political subdivisions included within the scope of the compact, may agree on behalf of the State that:
 - (A) Each party state shall extend to the civil defense forces of any other party state, while operating within its state limits under the terms and conditions of the compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, privileges, and immunities as if they were performing their duties in the state in which normally employed or rendering services[:].;
 - (B) Whenever any person holds a license, certificate, or other permit issued by any state evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving this skill in any party state to meet an emergency or disaster and the state shall give due recognition to such license, certificate, or other permit as if issued in the state in which aid is rendered[:].;
 - (C) No party state or its officers or employees rendering aid in another state pursuant to the compact shall be liable on account of any act or omission on the part of the forces while so engaged, or on account of the maintenance or use of any materials, equipment, goods, or facilities in connection therewith[:].;
 - (D) As an alternative to paragraph (C), such other or modified form of immunity as the governor may find acceptable[:].;
 - (E) Each party state shall provide for the payment of compensation and death benefits to injured members of the civil defense forces of that state and the representatives of deceased members of the forces in case the members sustain injuries or are killed while rendering aid pursuant to the compact, in the

same manner and on the same terms as if the injury or death were sustained within the state[.];

- (F) Any party state rendering aid in another state pursuant to the compact shall be reimbursed by the party state receiving aid, or by the United States government under plans approved by it, for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for all costs incurred in connection with requests for aid; provided that this paragraph shall not be deemed to preclude the State, if it is the aiding state, from assuming in whole or in part the loss, damage, expense, or other cost, or from loaning the equipment or donating the services to the receiving party state without charge or cost[.];
 - (G) Any party state receiving evacuees shall be reimbursed generally for the out-of-pocket expenses incurred in receiving and caring for the evacuees, for expenditures for transportation, food, clothing, medicines, and medical care, and like items; the expenditures shall be reimbursed by the party state of which the evacuees are residents, or by the United States government under plans approved by it[.]; and
 - (H) In the event of an evacuation, the party state of which the evacuees are residents shall, after the termination of the emergency or disaster, assume the responsibility for the ultimate support or repatriation of the evacuees[.];
- (4) [Other mutual aid.] Sponsor and develop mutual aid plans and agreements for civil defense between the political subdivisions of the State and between one or more political subdivisions and other public or private agencies, for the furnishing or exchange of food, clothing, medicine, and other materials; engineering services, emergency housing; police services; health, medical, and related services; fire fighting, rescue, transportation, and construction services and facilities; personnel necessary to provide or conduct these services; and such other materials, facilities, personnel, and services as may be needed. The mutual aid plans and agreements may be made with or without provisions for reimbursement of costs and expenses, and on such terms and conditions as are deemed necessary[.];
 - (5) [Control and utilization of government agencies.] Order and direct government agencies, officers, and employees, state or local, to take such action and employ such measures for law enforcement, medical, health, fire fighting, traffic control, warnings, and signals, engineering, rescue, construction, emergency housing, and other welfare, hospitalization, transportation, water supply, public information, training, and other civil defense and emergency functions as may be necessary, and utilize the services, materials, and facilities of the agencies and officers. All such agencies and officers shall cooperate with and extend their services, materials, and facilities to the governor as the governor may request[.];
 - (6) [Utilization of public property.] Take possession of, use, manage, control, and reallocate any public property, state or county, real or personal, required by the governor for the purposes of this chapter, including, without limitation, airports, parks, playgrounds, and schools, and other public buildings. Whenever the property is so taken the governor shall have power to make such provision for the

temporary accommodation of the government service affected thereby as the governor may deem advisable. Like provisions may be made at any time whenever it is necessary to relocate any government service because of any emergency condition[.];

- (7) [Utilization of existing private agencies.] Utilize all services, materials, and facilities of nongovernmental agencies, relief organizations, community associations, and other civil groups and private agencies that may be made available[.];
- (8) [Contributions.] Receive, expend, or use contributions or grants in money, property, or services, or loans of property, or special contributions or grants in money, property, or services, or loans of property, for special purposes provided for by this chapter; establish funds in the treasury for the deposit and expenditure of the moneys; procure federal aid as the same may be available, and apply the provisions of chapter 29 in cases of federal aid even though not in the form of money. The contributions or grants are appropriated for the purposes of this chapter, or for the special purposes[.];
- (9) [Maintenance and insurance of public property; restoration of vital facilities.] Provide for the repair and maintenance of public property, whenever adequate provision therefor is not otherwise made; insure the property against any war risk, including without limitation damage or loss resulting from or arising out of an attack or action in resisting or combating an attack or apparent attack; provide for the restoration, renovation, replacement, or reconstruction of insured property in the event of damage or loss, and make temporary restoration of public utilities and other vital facilities in the event of an attack or other disaster[.];
- (10) [Procurement, etc.] Purchase, make, produce, construct, rent, lease, or procure by condemnation or otherwise, transport, store, install, maintain, and insure, repair, renovate, restore, replace, or reconstruct, and distribute, furnish, or otherwise dispose of, with or without charges therefor, materials and facilities for civil defense and other emergency functions; procure federal aid therefor whenever feasible; and take any [and all] measures which may, in the governor's opinion, secure, stimulate, or increase similar activities by private or public persons or organizations. Chapter _____, sections [103-41 to 103-57,] 103-49, 103-50, 103-53 through 103-57, 105-1 to 105-10 and 464-4 shall not apply to any civil defense or other emergency functions if and to the extent that the governor [shall find] finds that the provisions, in whole or in part, impede or tend to impede the expeditious discharge of the functions, or that compliance therewith is impracticable due to existing conditions. In cases of extreme urgency during a civil defense emergency period the governor may suspend the penal provisions of sections 46-45 and 103-9, except those provisions that concern falsification[.];
- (11) [Personnel.] Appoint, employ, train, equip, and maintain, with compensation, or on a volunteer basis without compensation and without regard to chapters 76, 77, and 79, part II of chapter 88 and section 78-1, such agencies, officers, and other persons as the governor deems necessary to carry out this chapter; determine to what extent any law prohibiting the holding of more than one office or employment applies to the agencies, officers, and other persons; and subject

to section 128-15, provide for and effect the interchange of personnel, by detail, transfer, or otherwise, between the State and any political subdivision, or among any agencies or departments of the State[.];

- (12) [Charges.] Make charges in such cases and in such amounts as the governor deems advisable, for any property sold, work performed, services rendered, or accommodations or facilities furnished by the government under this chapter; and make charges for licenses or permits to cover administrative expense connected therewith[.];
- (13) [Contracts.] Make such contracts as may be necessary to carry out this chapter[.];
- (14) [Accounting.] Establish special accounting forms and practices whenever necessary[.]; and
- (15) [Other powers.] Take any and all steps necessary or appropriate to carry out the purposes of this chapter and to provide for civil defense and other emergency functions.
- [(16) Powers under this chapter are additional.]

The powers and authority conferred upon the governor by this chapter are in addition to any other powers or authority conferred upon the governor by the laws of the United States and of the State for the same or a like purpose, and shall not be construed as abrogating, limiting, or modifying any such powers, or authority.””

SECTION 19. Sections 29-17 through 29-23, Hawaii Revised Statutes, are repealed.

SECTION 20. Section 103-24.5, Hawaii Revised Statutes, is repealed.

SECTION 21. Sections 103-41, 103-42, 103-43, 103-43.5, 103-44, and 103-45, Hawaii Revised Statutes, are repealed.

SECTION 22. Sections 103-46, 103-47, and 103-48, Hawaii Revised Statutes, are repealed.

SECTION 23. Section 103-51, Hawaii Revised Statutes, is repealed.

SECTION 24. Chapter 106, Hawaii Revised Statutes, is repealed.

SECTION 25. Act 8, Special Session Laws of Hawaii 1993, is amended by repealing section -210 of the chapter established in section 2 of the Act.

["[§ -210] **Exemptions.** Unless otherwise provided by rules of the policy office, the following goods, services, and construction need not be procured by a chief procurement officer, but shall nevertheless be procured by an appropriate purchasing agency subject to the requirements of this chapter and the rules adopted by the policy office:

- (1) Works of art for museum and public display, which are generally sole source procurements;
- (2) Published books, maps, periodicals, and technical pamphlets, which are generally small purchases;
- (3) Meats and foodstuffs for the Kalaupapa settlement; and

- (4) Goods purchased by the State for commercial resale to the public, which procurements shall also be exempt from the competitive source selection methods contained in part III of this chapter.”]

SECTION 26. Act 8, Special Session Laws of Hawaii 1993, is amended by repealing section -905 of the chapter established in section 2 of the Act.

[[[§ -905] **Reciprocal preference.** (a) To ensure fair and open competition for Hawaii businesses engaged in contracting with other states, the chief procurement officer may impose a reciprocal preference against bidders from those states which apply preferences. The amount of the reciprocal preference shall be equal to the amount by which the preference which would be applied by the state of the nonresident bidder exceeds any preference applied by this State.

In determining whether a bidder qualifies as a resident bidder, the definition which would be utilized by the other state in applying such a preference shall be applied.

(b) The policy office may adopt rules to implement this section.

(c) This section shall not apply to any transaction if the provisions of the section conflict with any federal laws.”]

SECTION 27. Section 6 of Act 8, Special Session Laws of Hawaii 1993, is repealed.

[[“SECTION 6. Section 103-22.1, Hawaii Revised Statutes, is amended to read as follows:

“§103-22.1 **Services of the handicapped.** When a governmental agency contracts for or purchases services, five per cent preference shall be given to services to be performed by nonprofit corporations or public agencies operating sheltered workshops servicing the handicapped in conformance with criteria established by the department of labor and industrial relations pursuant to chapter 91; provided that service contracts awarded under this section shall be exempt from the wages provision of section 103-55. The [state comptroller] policy office shall adopt rules under chapter 91 to establish the preference for the services to be performed by nonprofit corporations or public agencies operating sheltered workshops consistent with this section.””]

SECTION 28. Section 7 of Act 8, Special Session Laws of Hawaii 1993, is repealed.

[[“SECTION 7. Section 103-24.5, Hawaii Revised Statutes, is amended to read as follows:

“[[[§103-24.5]]] **Procurement preference for recycled products.** In order to encourage the use of recycled products, contracts shall be awarded [to the lowest bidders,] in accordance with chapter _____, with preference given to the products containing recycled raw material. [The comptroller shall no later than January 1, 1992,] the policy office may establish rules in accordance with chapter 91 governing preference for recycled products. The rules shall establish percentages of preference and the method of determining the content of recycled raw material to qualify various products for preference.””]

SECTION 29. Section 10 of Act 8, Special Session Laws of Hawaii 1993, is repealed.

["SECTION 10. Section 103-42, Hawaii Revised Statutes, is amended to read as follows:

"§103-42 Hawaii products list, bidding and [advertisements.] public notice. The [state comptroller] policy office shall make rules [and regulations] for the establishment and administration of a Hawaii products list, including the various classifications of Hawaii products; for necessary procedures for qualifying and registering products for such list; for the annual revision of the list; and for such other purposes as may be necessary to carry out the intent of the preferences provided for in section 103-43.

The [comptroller] chief procurement officer shall distribute copies of the list to the purchasing departments of the various governmental agencies.

The [comptroller] chief procurement officer shall have the authority to examine and review the financial statements and such other reports as may be necessary, of any person, who desires to have the person's products on the Hawaii products list, to determine whether the products meet the qualifications. All persons whose products are on the Hawaii products list shall be responsible for informing the [comptroller] chief procurement officer of any change in the classifications of their products which have been originally registered with the Hawaii products list within two months of the change. In any event, such persons shall file annually with the [comptroller] chief procurement officer such documents or information as may be required in determining any change in the classification of a Hawaii product under the rules [and regulations] to be established by the [comptroller.] policy office, within two months from the closing of their books, whether on a fiscal or calendar year.

[Advertisement for bids] Public notice of invitations for bids and requests for proposals by a governmental agency shall contain, if applicable, a notice referring to the preferences for Hawaii products and to section 103-43, and shall also contain a notice referring to the place where the Hawaii products list may be examined.'"]

SECTION 30. Section 11 of Act 8, Special Session Laws of Hawaii 1993, is repealed.

["SECTION 11. Section 103-43, Hawaii Revised Statutes, is amended to read as follows:

"§103-43 Mandatory purchase of Hawaii products. In any expenditure of public funds, a governmental agency shall review purchase and design specifications of public works contracts including repair and maintenance requirements for products and purchase any required product from the Hawaii products list established under section 103-42 where such products are available, provided the products meet the minimum specifications and the selling price f.o.b. jobsite; unloaded including applicable general excise tax and use tax does not exceed the lowest delivered price in Hawaii f.o.b. jobsite; unloaded including applicable general excise tax and use tax of a similar non-Hawaii product by more than three per cent, where Class I Hawaii products are involved, or five per cent where Class II Hawaii products are involved, or ten per cent where Class III Hawaii products are involved.

Where a package bid or purchase contains both Hawaii and non-Hawaii products, then for the purpose of selecting the lowest bid or purchase price only, the price bid or offered for a non-Hawaii product item shall be increased by adding thereto three per cent, five per cent, or ten per cent where similar Class I,

Class II, or Class III Hawaii product items have been bid or offered by another party pursuant to the preferences stated above. The lowest total bid, taking into consideration the above preferences, shall be awarded the contract but the contract amount of any contract awarded, however, shall be the amount of the bid or price offered, exclusive of such preferences.

Notwithstanding the provisions of the preceding paragraphs, an additional five per cent preference shall be applicable to Hawaii products manufactured by nonprofit corporations and public agencies operating sheltered workshops as certified by the department of labor and industrial relations for physically or mentally handicapped persons. The [state comptroller] policy officer shall adopt rules under chapter 91 to require a governmental agency to give an additional five per cent preference to the purchase of products manufactured by nonprofit corporations or public agencies operating sheltered workshops consistent with this section.””]

SECTION 31. Section 12 of Act 8, Special Session Laws of Hawaii 1993, is repealed.

[“SECTION 12. Section 103-48, Hawaii Revised Statutes, is amended to read as follows:

“**§103-48 Penalty.** Any officer of the State or of any municipality, county, or other political subdivision thereof, or any person acting under or for such officer, or any other person who violates [any provisions of sections 103-22,] section 103-22.1, 103-23, 103-29, and 103-33] shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

Any officer or employee of any governmental agency who violates any provisions of sections 103-41 through 103-47 shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

Any person, or any officer or employee of any person, who violates any provisions of sections 103-41 through 103-47 shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and any person who is awarded a contract or given an order for purchase as a result of misrepresentation in the person’s bid or makes a claim in the person’s bid that the person will purchase Hawaii products, but fails to do so shall, in addition, be fined the difference between the price of the products actually used or supplied and the price the person would have paid for Hawaii products and shall not be awarded any contract or be given any order for purchase or be eligible for bidding until one year after the date when such person pays the fines levied under this section.””]

SECTION 32. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 33. This Act shall take effect on July 1, 1994; except that section 3 shall take effect upon approval.

(Approved June 21, 1994.)

Note

1. Edited pursuant to HRS §23G-16.5.