

ACT 228

H.B. NO. 3789

A Bill for an Act Relating to Public Contracts.

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

SECTION 1. The legislature finds that Hawaii's unique volcanic soil and rich organic matter provide the perfect medium for the cultivation of agricultural as well as horticultural species throughout the State. Locally-manufactured soil enhancement products, such as compost, green manures, and other organic mixtures, offer superior growth properties such as unparalleled fertility and excellent drainage capacity. Free of foreign insects, weeds, and other potentially harmful pathogens, these products are the logical choice for growers concerned about preserving Hawaii's unique native plant species and environment. The legislature finds that a policy to require state agencies to utilize locally-manufactured soil enhancement products is entirely consistent with the State's objective to protect Hawaii's native plant species and environment.

The legislature further finds that state procurement law establishes an incentive for bidders competing for public contracts to diligently pay their state taxes. The preference is necessary because of the fact that firms who consistently pay their taxes are often placed at a disadvantage to those who have not made payments. To enhance the effectiveness of this incentive, this Act also strengthens the qualifying standards of this provision.

SECTION 2. Section 103D-1002, Hawaii Revised Statutes, is amended to read as follows:

“[§103D-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. Upon receipt and approval of application for Hawaii products preference, the administrator shall include within the Hawaii products list, the names of producers and manufacturers in the State who are authorized to supply locally manufactured soil enhancement products to state agencies under subsection (i). 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.

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

SECTION 3. Section 103-45.5, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) In any contract for a public works project, a state agency shall award the contract to a bidder who has filed State of Hawaii employment, general excise, and income tax returns and has paid all amounts owing on such returns for [two] four successive years prior to submitting the bid; provided that the amount of that bid is not more than [five] fifteen per cent higher than the amount bid by any competing contractor who has not filed or paid State of Hawaii taxes as specified, and the amount of the bid by the state tax paying bidder is \$5,000,000 or less.

(d) In any contract for a public works project, a state agency shall award the contract to a bidder who has filed State of Hawaii employment, general excise, and income tax returns and has paid all amounts owing on such returns for [four] eight successive years prior to submitting the bid; provided that the amount of that bid is not more than [five] fifteen per cent higher than the amount bid by any competing contractor who has not filed or paid State of Hawaii taxes as specified, and the amount of the bid by the state tax paying bidder is more than \$5,000,000.”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 18, 1996.)