

ACT 174

S.B. NO. 2384

A Bill for an Act Relating to Hawaii Products Preference.

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

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

However, the legislature finds that the preference for Hawaii products is still necessary and advantageous with respect to the procurement of agricultural goods, value-added products, and commodities.

Accordingly, the purpose of this Act is to amend the procurement preference for Hawaii products to only apply to the procurement of agricultural goods, value-added products, and commodities, subject to availability and policy considerations.

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

““Hawaii input” means the part of the cost of a product that is attributable to production, manufacturing, or other expenses arising within the State. “Hawaii input” includes but is not limited to:

- (1) The cost to mine, excavate, produce, manufacture, raise, [or] grow, assemble, or fabricate the materials in Hawaii;
- (2) The added value of that portion of the cost of imported materials that is incurred after landing in Hawaii, including but not limited to other articles, materials, and supplies, added to the imported 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 of work specified in the invitation for bids or request for proposals; or

- (2) Allow as part of the offer, self-certification that the Hawaii products qualify for preference;

provided that the offer may be evaluated along with any other published criteria in the solicitation, including but not limited to considerations such as specific nutritional content or its equivalent, timing of delivery, quality or freshness, and past performance, if applicable.

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

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

(d) Where a bid or proposal contains both Hawaii and non-Hawaii products, then for the purpose of selecting the lowest bid or purchase price only, the price or bid offered for a Hawaii product item shall be decreased by subtracting ten per cent for class I Hawaii product items bid or offered, or fifteen per cent for class II Hawaii product items bid or offered. The lowest total bid or proposal, taking the preference 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.

(e) 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 ~~[(4)-(7)]~~ (1). 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) Any person not on the Hawaii products list desiring a preference pursuant to this section shall certify the Hawaii product when submitting a response to a solicitation; provided that the person certifies under penalty of sanctions that the offered Hawaii products meet the requirements for the preference.

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

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

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

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

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

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

(2) The solicitation is for public works construction.

(j) 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.

(k) The department of accounting and general services shall provide written notice to all vendors of construction products who are registered on the Hawaii products list with the state procurement office regarding any amendments to this section, including effective dates and dates of repeal.

~~[(k)]~~ (l) 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]~~. “Soil enhancement product” 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 4. Section 103D-1010, Hawaii Revised Statutes, is amended to read as follows:

~~“[§103D-1010]~~ **Purchases from qualified community rehabilitation programs.** (a) Any governmental body, without advertising or calling for bids, may purchase goods or services provided by qualified community rehabilitation programs serving persons with disabilities that have indicated an interest in supplying the goods or services and on an equitable basis may apportion the business among the interested programs; provided that the goods and services meet the specifications and needs of the purchasing agency and are purchased at a fair market price as determined by the appropriate public agency; and provided 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 be placed on the Hawaii products list under section 103D-1002].”~~

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

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

(Approved June 27, 2022.)

Note

1. The letters in “be placed on the Hawaii products list under section” were enacted as reversed text.