

A Bill for an Act Relating to Procurement Preferences and Reciprocity.

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

SECTION 1. The legislature finds that Hawaii service businesses are an important aspect of the State's economy. They boost the economy by employing Hawaii residents who spend their earnings in the State. Therefore, when expending public funds, the term "buy local" should apply to the State's purchase of services in the same way as it does to the purchase of goods.

The legislature further finds that many of the State's residents who earn college degrees either leave the State or do not return due to the lack of career opportunities. Public accounting firms with offices in the State help to address these needs by offering professional career paths that allow residents to remain in the State. These public accounting firms are committed to helping residents develop the professional and technical skills necessary to succeed in the public accounting industry; however, the high cost of operating a business and the high cost of living in Hawaii makes it difficult to compete for government contracts against firms without offices in Hawaii that operate out of low-cost jurisdictions.

The legislature also finds that procurement preferences can encourage the growth and sustainability of businesses that employ Hawaii residents by providing them with a competitive advantage in government contracts. This, in turn, can lead to the creation of new jobs or the retention of existing ones and increase economic activity within the State.

Accordingly, the purpose of this Act is to:

- (1) Establish a new accounting services procurement preference for certain Hawaii accounting service businesses and add it to the list of selection criteria for the procurement of professional services; and
- (2) Clarify that the existing reciprocity procurement preference includes offerors under sections 103D-302 and 103D-303, Hawaii Revised Statutes.

SECTION 2. Chapter 103D, Hawaii Revised Statutes, is amended by adding a new section to part X to be appropriately designated and to read as follows:

"§103D- Accounting service businesses. (a) In any expenditure of public funds for accounting services, the use of Hawaii accounting service businesses shall be preferred. Where a package bid or response to a request for proposal contains Hawaii and non-Hawaii accounting service businesses, for the purpose of selecting the lowest bid or purchase price only, the bid or offer by a non-Hawaii accounting service business shall be increased by a preference percentage of twenty per cent; provided that the Hawaii accounting service business shall provide a self-certification that:

- (1) Not less than eighty per cent of the labor for accounting services, with respect to time and expenses incurred, will be performed in the State by persons domiciled in the State; and

- (2) With respect to the size of the physical location, the commercial place of business is of sufficient capacity to accommodate every person performing accounting services under any contract subject to chapter 103D.
- (b) This section shall not apply when precluded by federal requirements for competitive bidding or offers.”

SECTION 3. Section 103D-1001, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

“Accounting service” means the art of recording, classifying, and summarizing, in a significant manner and in terms of money, transactions and events that are, at least in part, of a financial character, and interpreting the results. “Accounting service” includes assurance services, such as the performance of an audit.

“Commercial place of business” means a physical location in the State, such as an office, suite, or unit, where business is regularly conducted. A “commercial place of business” shall not include a dwelling or any physical location in which a person resides or a physical location used for business purposes in violation of the applicable land use or zoning laws.

“Hawaii accounting service business” means any person, agency, corporation, or other business entity engaged in the business of accounting services with a commercial place of business located in the State.”

SECTION 4. Section 103D-304, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

(e) The selection criteria employed in descending order of importance shall be:

- (1) Experience and professional qualifications relevant to the project type;
- (2) Past performance on projects of similar scope for public agencies or private industry, including corrective actions and other responses to notices of deficiencies;
- (3) Capacity to accomplish the work in the required time; ~~and~~
- (4) For accounting services, whether the accounting service business is located in the State, with a preference for Hawaii accounting service businesses; provided that the Hawaii accounting service business shall provide a self-certification that:
 - (A) Not less than eighty per cent of the labor for accounting services, with respect to time and expenses incurred, will be performed in the State by persons domiciled in the State; and
 - (B) With respect to the size of the physical location, the commercial place of business is of sufficient capacity to accommodate every person performing accounting services under any contract subject to this chapter; and
- [4] (5) Any additional criteria determined in writing by the selection committee to be relevant to the purchasing agency’s needs or necessary and appropriate to ensure full, open, and fair competition for professional services contracts.”

SECTION 5. Section 103D-1004, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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“(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 and offerors pursuant to sections 103D-302 and 103D-303 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 or offeror qualifies as a resident bidder^[.] or offeror, the definition used by the other state in applying a preference shall apply.”

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

SECTION 7. This Act shall take effect on July 1, 2024, and shall be repealed on June 30, 2028; provided that sections 103D-304, 103D-1001, and 103D-1004, Hawaii Revised Statutes, shall be reenacted in the forms in which they read on the day before the effective day of this Act.

(Approved June 27, 2024.)

Note

1. Edited pursuant to HRS §23G-16.5.