THE SENATE
THIRTY-THIRD LEGISLATURE, 2026
STATE OF HAWAII

S.B. NO. 2075 S.D. 1

A BILL FOR AN ACT

RELATING TO PUBLIC PROCUREMENT.

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

SECTION 1. The legislature finds that supporting state businesses strengthens the State's economy by creating local employment, expanding workforce and business capacity, and enhancing economic sustainability. The legislature further finds that public procurement is a significant exercise of the State's purchasing power and, when expending its own funds, the State acts as a market participant.

The legislature recognizes that local preference programs within the public procurement code have been adopted in numerous jurisdictions. However, aggressive percentage preferences may increase litigation risk under the dormant commerce clause, equal protection clause, and related constitutional doctrines.

Therefore, the legislature determines that adopting a modest and carefully structured preference percentage, with clear verification standards, reciprocity provisions, and federal funding limitations, will promote local economic

development while reducing the likelihood of undue court action that could invalidate the program in its entirety.

Accordingly, the purpose of this Act is to adopt a moderate, capped, and administratively verifiable five per cent evaluation preference, limited in scope and accompanied by clear certification, verification, enforcement, and reciprocity provisions, to promote in-state economic participation while preserving fairness, transparency, and fiscal responsibility in the procurement process.

SECTION 2. Section 103D-302, Hawaii Revised Statutes, is amended to read as follows:

"**§103D-302 Competitive sealed bidding.** (a) Contracts shall be awarded by competitive sealed bidding except as otherwise provided in section 103D-301. Awards of contracts by competitive sealed bidding may be made after single or multi-step bidding. Competitive sealed bidding does not include negotiations with bidders after the receipt and opening of bids. Award is based on the criteria set forth in the invitation for bids.

(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 that do not comply with this requirement may be accepted if acceptance is in the best interest of the State 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.

(c) Adequate public notice of the invitation for bids shall be given a reasonable time before the date set forth in the invitation for the opening of bids. The policy board shall adopt rules which specify:

(1) The form that the notice is to take;

(2) What constitutes a reasonable interim between publication and bid opening; and

(3) How notice may be published, including publication in a newspaper of general circulation, notice by mail to all persons on any applicable bidders mailing list, publication by any public or private telecommunication

information network, or any other method of publication it deems to be effective.

(d) Bids shall be opened publicly in the presence of one or more witnesses, at the time and place designated in the invitation for bids. The amount of each bid and other relevant information specified by rule, together with the name of each bidder shall be recorded. The record and each bid shall be open to public inspection.

(e) Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter or by rules adopted by the policy board.

(f) Bids shall be evaluated based on the requirements set forth in the invitation for bids. These requirements may include criteria to determine acceptability, such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. [~~Those~~] The criteria that will affect the bid price and be considered in evaluation for award shall be as objectively measurable as possible, such as discounts, transportation costs, total or life cycle costs, and the bidder's past performance, if available. The invitation for bids shall set forth the evaluation criteria to be used. No

criteria may be used in bid evaluation that are not set forth in the invitation for bids.

(g) Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of invitations for bids, awards, or contracts based on such bid mistakes, shall be permitted in accordance with rules adopted by the policy board. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the public or to fair competition shall be permitted. Except as otherwise provided by rule, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the chief procurement officer or head of a purchasing agency.

(h) The contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. In the event all bids exceed available funds as certified by the appropriate fiscal officer, the head of the purchasing agency responsible for the procurement in question is authorized, in situations where time or economic considerations preclude resolicitation of work of a

reduced scope, to negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsible and responsive bidder, in order to bring the bid within the amount of available funds.

(i) When it is not practicable to initially prepare a purchase description to support an award based on price, an invitation for bids, which requests the submission of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation, may be used. If a multi-step sealed bidding process is used, the notice and the invitation for bids shall describe each step to be used in soliciting, evaluating, and selecting unpriced offers.

(j) Hawaii bidder preference. For evaluation purposes only, when a responsible and responsive bidder qualifies as a Hawaii bidder and submits a Hawaii bidder preference certification at or before the time set for bid opening, the bid price shall be deemed reduced by five per cent; provided that:

(1) The total preference amount shall not exceed $500,000;

(2) The preference:

(A) Shall apply only when:

(i) The total bid price is less than $10,000,000;

(ii) Application of the preference does not conflict with federal law, federal regulation, or a condition for the allocation of federal funds to the procurement; and

(iii) A Hawaii bidder competes against a bidder that does not qualify as a Hawaii bidder; and

(B) Shall not be applied between two Hawaii bidders;

(3) Award of contract shall be made at the original bid price and not at the reduced evaluated price;

(4) A bidder receiving the preference shall certify, under penalty of perjury, that:

(A) Not less than fifty-one per cent of the total direct labor hours required for performance of the contract will be performed within the State; and

(B) The bidder will maintain qualification as a Hawaii bidder throughout contract performance;

(5) Before award of a contract to a bidder receiving a preference pursuant to this subsection, the procurement officer shall verify that the bidder satisfies all eligibility requirements; provided that any bidder who does not satisfy the requirements shall be given a reasonable time to cure the deficiency.

(6) Failure to maintain qualification as a Hawaii bidder shall subject the contract to price adjustment equal to the value of the preference applied and may constitute cause for debarment pursuant to section 103D-702; and

(7) Nothing in this subsection shall limit the authority of the chief procurement officer to apply a reciprocal preference against a nonresident bidder pursuant to section 103D-1004.

For the purposes of this subsection, "Hawaii bidder" and "Hawaii bidder preference certification" have the same meanings as those terms are defined in section 103D-1001."

SECTION 3. Section 103D-303, Hawaii Revised Statutes, is amended to read as follows:

"§103D-303 **Competitive sealed proposals.** (a) Competitive sealed proposals may be used to procure goods, services, or construction that are [~~either~~] not practicable or not advantageous to the State to procure by competitive sealed bidding.

(b) Proposals shall be solicited through a request for proposals.

(c) Notice of the request for proposals shall be given in the same manner as provided in section 103D-302(c).

(d) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of evaluation. A register of proposals shall be prepared and shall be open for public inspection after contract award.

(e) The request for proposals shall include as an evaluation factor, past performance on projects of similar scope for public agencies or private industry, and shall state the relative importance of price, past performance, and other evaluation factors.

(f) Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably likely to be selected for a contract award for the purpose of clarification

to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(g) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

(h) In cases of awards made under this section, non-selected offerors may submit a written request for debriefing to the procurement officer within three working days after the posting of the award of the contract. Thereafter, the procurement officer shall provide the non-selected offeror a prompt debriefing. Any protest by the non-selected offeror pursuant to section 103D-701 following debriefing shall be filed

in writing with the procurement officer within five working days after the date upon which the debriefing is completed.

(i) In addition to any other provisions of this section, construction projects may be solicited through a request for proposals to use the design-build method; provided that:

(1) A request for proposals is issued to prequalify offerors to select a short list of [~~no~~] not more than three responsible offerors[~~, prior to~~] before the submittal of proposals; provided that the number of offerors to be selected for the short list shall be stated in the request for proposals and prompt notice is given to all offerors as to which offerors have been short-listed;

(2) A conceptual design fee may be paid to non-selected offerors that submit a technically responsive proposal; provided that the cost of the entire project is greater than $1,000,000;

(3) The criteria for pre-qualification of offerors, design requirements, development documents, proposal evaluation criteria, terms of the payment of a conceptual design fee, or any other pertinent

information shall be stated in the request for proposals; and

(4) Past performance on projects of similar scope for public agencies or private industries shall be an evaluation factor for the prequalification of offerors.

(j) Hawaii offeror preference. For evaluation purposes only, when a responsible offeror qualifies as a Hawaii offeror and submits a Hawaii offeror preference certification at or before the time set for receipt of proposals, the proposal price shall be deemed reduced by five per cent; provided that:

(1) The total preference amount shall not exceed $500,000;

(2) The preference:

(A) Shall apply only when:

(i) The total contract value is less than $10,000,000;

(ii) Application of the preference does not conflict with federal law, federal regulation, or a condition for the allocation of federal funds to the procurement; and

(iii) A Hawaii offeror competes against an offeror that does not qualify as a Hawaii offeror; and

(B) Shall not be applied between two Hawaii offerors;

(3) Award of contract shall be made at the original contract price and not at the reduced evaluated price;

(4) An offeror receiving the preference shall certify, under penalty of perjury, that:

(A) Not less than fifty-one per cent of the total direct labor hours required for performance of the contract will be performed within the State; and

(B) The offeror will maintain qualification as a Hawaii offeror throughout contract performance;

(5) Before award of a contract to an offeror receiving a preference pursuant to this subsection, the procurement officer shall verify that the offeror satisfies all eligibility requirements; provided that any offeror who does not satisfy the requirements shall be given a reasonable time to cure the deficiency.

(6) Failure to maintain qualification as a Hawaii offeror shall subject the contract to price adjustment equal to the value of the preference applied and may constitute cause for debarment pursuant to section 103D-702; and

(7) Nothing in this subsection shall limit the authority of the chief procurement officer to apply a reciprocal preference against a nonresident offeror pursuant to section 103D-1004.

For the purposes of this subsection, "Hawaii offeror" and "Hawaii offeror preference certification" have the same meanings as those terms are defined in section 103D-1001."

SECTION 4. Section 103D-702, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The causes for debarment or suspension include the following:

(1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;

(2) Conviction under state or federal statutes relating to embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a contractor;

(3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(4) Violation of contract provisions, as set forth below, of a character that is regarded by the chief procurement officer to be so serious as to justify debarment action:

(A) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(B) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the

contractor shall not be considered to be a basis for debarment;

(5) Knowingly making, or causing to be made, a false or misleading statement or certification of material fact for the purposes of obtaining or retaining a preference under section 103D-302(j) or 103D-303(j);

[~~(5)~~] (6) Any other cause the chief procurement officer determines to be so serious and compelling as to affect responsibility as a contractor, including debarment by another governmental entity for any cause listed in the rules of the policy board; and

[~~(6)~~] (7) Violation of the ethical standards set forth in chapter 84 and its implementing rules, or the charters and ordinances of the several counties and their implementing rules."

SECTION 5. Section 103D-1001, Hawaii Revised Statutes, is amended by adding four new definitions to be appropriately inserted and to read as follows:

""Hawaii bidder" means any person that:

(1) Holds a valid commercial place of business in the State that has been staffed by the person or an

employee of the person for not less than two consecutive years immediately preceding the time and date set for the opening of bids;

(2) Submits a bid under the name under which the person is authorized to do business in the State; and

(3) If a joint venture, is composed entirely of persons meeting the requirements of paragraphs (1) and (2).

For the purpose of this definition, "person" includes an agency, corporation, and other business entity.

"Hawaii bidder preference certification" means a sworn statement executed under penalty of perjury by an authorized representative of a bidder attesting to eligibility for the Hawaii bidder preference established under section 103D-302(j) and agreeing to maintain qualification throughout contract performance.

"Hawaii offeror" means any person that:

(1) Holds a valid commercial place of business in the State that has been staffed by the person or an employee of the person for not less than two consecutive years immediately preceding the time and date set for the receipt of proposals;

(2) Submits a proposal under the name under which the person is authorized to do business in the State; and

(3) If a joint venture, is composed entirely of persons meeting the requirements of paragraphs (1) and (2).

For the purposes of this definition, "person" includes an agency, corporation, and other business entity.

"Hawaii offeror preference certification" means a sworn statement executed under penalty of perjury by an authorized representative of an offeror, attesting to eligibility for the Hawaii offeror preference established under section 103D-303(j) and agreeing to maintain qualification throughout contract performance."

SECTION 6. 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~~] of 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 [~~(l).~~] (m). 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 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.

(1) The policy board shall adopt rules pursuant to chapter 91 to implement the Hawaii bidder preference and Hawaii offeror preference established under sections 103D-302(j) and 103D-303(j), respectively, including:

(1) Standardized certification forms;

(2) Verification procedures and documentation standards;

(3) Audit and compliance monitoring procedures;

(4) Methods for calculating direct labor hours; and

(5) Procedures for enforcement referral.

[~~(1)~~] (m) 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. "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 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 2525.

S.B. NO. 2075 S.D. 1

Report Title:
Public Procurement; Local Preference; Hawaii Bidders; Hawaii Offerors; Competitive Sealed Bidding; Competitive Sealed Proposals; Debarment; Rules

Description:
Requires purchasing agencies to apply a local preference in evaluating bids or proposals from qualified Hawaii bidders or offerors who submit a timely preference certification. Establishes criteria for a bid or proposal to qualify for a local preference. Establishes requirements for the qualification and certification of Hawaii bidders and offerors. Authorizes the false or misleading actions for the obtaining or retaining of a Hawaii bidder or offeror preference to constitute cause for debarment. Allows the Procurement Policy Board to adopt rules. Effective 7/1/2525. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.