

ACT 124

An Act Amending Sections 9-30, 9-37 Through 9-44, Revised Laws of Hawaii 1955, as Amended, Providing Preferences for Hawaii Products.

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

SECTION 1. Section 9-30, Revised Laws of Hawaii 1955, is hereby amended by deleting the first sentence of said section and substituting in place thereof the following:

“All such contracts shall be in writing; shall be executed in the name of the State, county, or the board, bureau or commission thereof authorized to let contracts in its own name, as the case may be, by the officer letting the same, and shall be made with the lowest responsible bidder, except as provided for in section 9-39 herein, if such bidder shall qualify by providing the security required by sections 9-31 to 9-34.”

SECTION 2. Sections 9-37 through 9-44, Revised Laws of Hawaii 1955, as amended, are hereby further amended to read as follows:

“Section 9-37. Definitions. Whenever used in sections 9-37 through 9-44:

(a) ‘Person’ includes every individual, partnership, firm, society, unincorporated association, joint venture, group, hui, joint stock company, corporation, trustee, executor, administrator, trust estate, decedent’s estate, trust or other entities, whether such persons are doing business for themselves or in any agency or a fiduciary capacity.

(b) ‘Products’ include materials, manufactures, supplies, merchandise, goods, wares, products and foodstuffs.

(c) ‘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 inputs within the State including Hawaii products, labor, skill or other services. This does not include the mere assembling or putting together of non-Hawaii products or material.

(d) ‘Hawaii products’ include products which have been mined, excavated, produced, manufactured, raised or grown in the State of Hawaii by a person where the inputs stated in subparagraph (c) above constitute no less than 25% of the manufactured cost. Where the value of the inputs constitutes 25% or more but less than 50% of the manufactured cost, the product shall be classified as class I; where the value of the inputs constitutes 50% or more but less than 75% of the manufactured cost, the product shall be classified as class II; where the value of the inputs constitutes 75% or more of the manufactured cost, the product shall be classified as class III.

(e) ‘Governmental agency’ includes the State, municipal or county governments, or any department, bureau, division, agency or political subdivision thereof and any board, committee, public officer or employee thereof.

Section 9-38. Hawaii products list, bidding and advertisements. The state comptroller 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 said list; and for such other purposes as may be necessary to carry out the intent of the preferences provided for in section 9-39.

The comptroller shall distribute copies of said list to the purchasing departments of the various governmental agencies.

The comptroller 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 his 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 of any change in the classifications of their products which have been originally registered with the Hawaii products list within two months of said change. In any event, such persons shall file annually with the comptroller 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, within two months from the closing of their books, whether on a fiscal or calendar year.

Every advertisement for bid by a governmental agency shall contain

a notice referring to the preferences for Hawaii products and to section 9-39, and shall contain a notice referring to the place where the Hawaii products list may be examined.

Section 9-39. Mandatory purchase of Hawaii products. In any expenditure of public funds, a governmental agency shall purchase any required product from the Hawaii products list established under section 9-38 where such products are available, provided said products meet the minimum specifications and the selling price does not exceed 3%, where class I Hawaii products are involved, or 5% where class II Hawaii products are involved or 10% where class III Hawaii products are involved, of the delivered or lowest bid in Hawaii of similar non-Hawaii product.

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 3%, 5% or 10% where a 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.

Section 9-40. Designation of products in bidding. All persons submitting bids to any governmental agency and claiming the above preferences must have the products being offered or used qualified and registered with the Hawaii products list and shall designate in their bids as to which individual product to be supplied is a Hawaii product and the class thereof.

Section 9-41. Public works contract; specifications. In all public works and any repair or maintenance contracts, a governmental agency or any person employed by a governmental agency, including architects and engineers, shall describe in all specifications, products listed in the Hawaii products list established under section 9-38 which may be used, where such products are available and meet the minimum specifications.

In any such bid by any person utilizing Hawaii products, such person may claim the preferences stated in section 9-39 above, provided that such person complies with the provisions set forth in section 9-40. For the purpose of determining the lowest bid price only, the provisions of section 9-39 shall also apply.

Section 9-42. Inapplicable when federal funds jeopardized. Sections 9-37 through 9-41, 9-43 and 9-44 shall not be applicable whenever their application will disqualify any governmental agency from receiving federal funds or aid.

Section 9-43. Violation voids contract. Any purchase made or any contract awarded or executed in violation of sections 9-37 through 9-41 shall be void and of no effect, and no payment shall be made by any governmental agency on account of any such purchase or contract.

Section 9-44. Penalty. Any officer or employee of any governmental agency who violates any provisions of sections 9-37 through 9-43 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 9-37 through 9-43 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 his bid or makes a claim in his bid that he 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 he 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 3. This Act shall take effect upon its approval.

(Approved May 31, 1963.) **S.B. 780.**
