

## ACT 352

H.B. NO. 1686

A Bill for an Act Relating to Procurement.

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

SECTION 1. Chapter 103D, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

**“§103D- Tax clearances; setoff for due and unpaid taxes.** (a) Unless the director of taxation determines that waiver of the Internal Revenue Service tax clearance requirement is necessary to expedite or facilitate the procurement process and is in the best interest of the State, and waives the Internal Revenue Service tax clearance requirement, no contract shall be binding or effective until the contractor secures and the purchasing agency receives a tax clearance from the director of taxation and the Internal Revenue Service to the effect that all tax returns due have been filed, and all taxes, interest, and penalties levied or accrued, under title 14 that are administered by the department of taxation and under the Internal Revenue Code, against the contractor have been paid.

(b) During the term of a contract, if a lien is imposed against the contractor for a tax debt under section 231-33 or the contractor fails to timely file all tax returns and pay all taxes, interest, and penalties due to the Internal Revenue Service, the comptroller or respective county director of finance, upon request of the director of taxation, shall set off the amount of the tax debt against any payment due to the contractor until the tax debt is paid in full.

(c) All state and county procurement officers or agents shall withhold final payment of a contract until the receipt of tax clearances from the director of taxation and the Internal Revenue Service. Notwithstanding sections 40-57 and 40-58, if a contractor fails to provide the requisite tax clearances within six months of the completion of the contract, the state or county procurement officer or agent shall first notify the department of taxation which in turn will notify the Internal Revenue Service, of amounts payable to the contractor on completed contracts. The department of taxation and the Internal Revenue Service, within thirty days, shall request the procurement officer or agent to set off the amount of taxes due against any payment due to the contractor until the tax debt is paid in full to the State or the Internal Revenue Service, or both. No final bill or invoice from the contractor shall

be required as a condition to the setoff. Any remaining contract balance shall revert to the appropriation under which it was encumbered.

(d) This section shall not apply to any contract of less than \$25,000 or any contract entered into pursuant to section 103D-305 or 103D-307.

(e) This section shall not apply to a contractor who the director of taxation certifies is:

- (1) Contesting the validity of a tax debt, or that any tax, penalty, or interest is due and owing the Internal Revenue Service in an administrative or judicial appeal; or
- (2) In good standing, having entered into a plan or plans in which the tax debt, or any tax, penalty, or interest due and owing the Internal Revenue Service is being paid to the department of taxation or the Internal Revenue Service.’’

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

“**§103D- Application of this part.** The preferences in this part shall apply to procurements made pursuant to sections 103D-302 and 103D-303.

**§103D- Preference to bidders on state agency contracts.** (a) The requirements in this section are in addition to any other applicable requirements provided in this chapter.

(b) The preference in this section may not be used in combination with any other preference otherwise available to a bidder under state or federal law.

(c) In any contract for a public works project, a state agency shall award the contract to a bidder who has filed all state tax returns due to the State and paid all amounts owing on such returns for two successive years prior to submitting the bid; provided that the amount of that bid is not more than seven per cent higher than the amount bid by any competing contractor who has not filed or paid all applicable state taxes, 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 all state tax returns due to the State and paid all amounts owing on such returns for four successive years prior to submitting the bid; provided that the amount of that bid is not more than seven per cent higher than the amount bid by any competing contractor who has not filed or paid all applicable state taxes, and the amount of the bid by the state tax paying bidder is more than \$5,000,000.

(e) If two or more contractors who have paid state and county taxes or were required to submit a filing regarding state and county taxes are bidding on a public works contract, and those contractors meet the criteria outlined in subsection (c) or (d), the state agency shall award the contract to the contractor among them who has submitted the lowest bid.

(f) If any federal statute or regulation precludes the granting of federal assistance or reduces the amount of that assistance for a particular public works project because of preference awarded by this section, this section shall not apply insofar as its application would preclude or reduce federal assistance for that work.’’

SECTION 3. Section 103-53, Hawaii Revised Statutes, is amended:

1. By amending subsection (a) to read as follows:

“(a) All state and county officers and agents making contracts on behalf of the State or any county shall require, as a prerequisite to entering into these contracts, tax clearances from the director of taxation and the Internal Revenue

Service to the effect that all tax returns due have been filed, and all taxes, interest, and penalties levied against the contractor or accrued under [the provisions of] title 14 that are administered by the department of taxation and under the Internal Revenue Code [against the contractor] have been paid. The director of taxation may waive the Internal Revenue Service tax clearance requirement if the director determines that it is in the best interest of the state.”

2. By amending subsection (c) to read as follows:

“(c) All state and county contracting officers or agents shall withhold final payment [in the final settlement] of a contract until the receipt of tax clearances from the director of taxation and the Internal Revenue Service. Notwithstanding sections 40-57 and 40-58, if a contractor fails to provide the requisite tax clearances within six months of the [notice of final settlement or] completion date of the contract, the state or county contracting officer or agent shall [assign the final settlement payment in an amount not to exceed the tax liability to the department of taxation or Internal Revenue Service; provided that the department of taxation may first off set its tax debt against the sum owed to the contractor.] first notify the department of taxation which in turn will notify the Internal Revenue Service, of amounts payable to the contractor on completed contracts. The department of taxation and the Internal Revenue Service shall, within thirty days, request the contracting officer or agent to offset the amount of taxes due against any payment due to the contractor until the tax debt is paid in full to the State or the Internal Revenue Service or both. No final bill or invoice from the contractor shall be required as a condition to the offset. Any remaining contract balance shall revert to the appropriation under which it was encumbered.”

3. By amending subsections (e) and (f) to read as follows:

“(e) [Subsection (a)] This section shall not apply to:

- (1) Any procurement of less than [\$10,000 that qualifies as] \$25,000 or is considered a small purchase under section 103D-305[, except that] and any state or county department [or contracting agency may apply subsection (a) to contracts] contract of less than [\$10,000; and] \$25,000;
- (2) Emergency purchases [as set forth in section 103D-307.] for the procurement of goods, services, or construction under section 103D-307, disaster relief under chapter 127, or a civil defense emergency under chapter 128;
- (3) Grants and subsidies disbursed by a state agency pursuant to chapter 42D or in accordance with standards provided by law as required by article VII, section 4, of the State Constitution, or made by the counties pursuant to their respective charters or ordinances;
- (4) Contracts or agreements between government agencies;
- (5) Contracts or agreements to disburse funds:
  - (A) To make payments to or on behalf of public officers and employees for salaries, fringe benefits, professional fees, and reimbursements;
  - (B) To satisfy obligations required to be paid by law, including fees, judgments, settlements, and other payments for resolving claims;
  - (C) To make refunds or return funds held by the State or county as trustee, custodian, or bailee;
  - (D) For entitlement programs, including public assistance, unemployment, and workers’ compensation programs, established by state or federal law;
  - (E) For deposit, investment, or safekeeping, including sums to pay expenses related to their deposit investment, or safekeeping;
  - (F) For loans under government-administered loan programs;

- (G) To make periodic, recurring payments for utility services;
- (6) Rent for the use or occupation of the premises and facilities at Aloha Stadium, the convention center, or any other state or county large spectator events facility;
- (7) Contracts or agreements entered into pursuant to chapter 102; and
- (8) Requirements of chapter 103D.

(f) This section shall not apply to a contractor if the department of taxation certifies that the contractor is in good standing under a plan in which delinquent taxes, interest, and penalties are being paid to the department of taxation (and the Internal Revenue Service, if applicable) in installments.”

SECTION 4. Section 103D-201, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§103D-201]]~~ **Creation and membership of the procurement policy [office.] board.** (a) There is hereby created an autonomous state procurement policy [office.] board. The policy [office] board shall be assigned, for administrative purposes only, to the department of accounting and general services.

(b) The policy [office] board shall consist of [a board of] five members. Notwithstanding the limitations of section 78-5, the members of the board shall include:

- (1) The comptroller;
- (2) A county employee with significant high-level procurement experience; and
- (3) Three persons who shall not otherwise be full-time employees of, or contractors with, the State or any county; provided that at least one member shall be a certified professional in the field of procurement and at least one member shall have significant high-level, federal procurement experience.

Each appointed member shall have demonstrated sufficient business or professional experience to discharge the functions of the policy [office.] board. The initial and subsequent members of the policy [office.] board, other than the comptroller, shall be appointed by the governor from a list of three individuals for each vacant position, submitted by a nominating committee composed of four individuals chosen as follows: two persons appointed by the governor; one person appointed by the president of the senate; and one person appointed by the speaker of the house. Except as provided in this section, the selection and terms of the policy [office] board members shall be subject to the requirements of section 26-34. No member of the policy [office] board shall act concurrently as a chief procurement officer. The members of the policy [office] board shall devote such time to their duties as may be necessary for the proper discharge thereof.

(c) The policy [office] board shall be assisted by employees of the department of accounting and general services, which shall provide at least one full time support staff and funding necessary to support the policy [office.] board.

(d) Members of the policy [office] board shall be reimbursed for any expenses, including travel expenses, reasonably incurred in the performance of their duties. [During the first year of the existence of the policy office, members who are not otherwise employees of the State or a county shall be allowed compensation at a rate of \$100 per day for each day’s actual attendance at meetings.]

(e) The chairperson of the policy [office] board shall be elected annually by a majority of its members from among all of its members; provided that the state comptroller shall not be eligible to serve as the chairperson. [If the chairperson is not a county officer or employee, the chairperson shall be allowed an additional compensation of \$50 per day for each day of actual attendance at board meetings.]”

SECTION 5. Section 103D-203, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§103D-203]]~~ **Chief procurement officers.** (a) The chief procurement officer for each of the following state entities shall be:

- (1) The judiciary—the administrative director of the courts;
  - (2) The senate—the president of the senate;
  - (3) The house of representatives—the speaker of the house of representatives;
  - (4) The office of Hawaiian affairs—[its board of trustees;] the chairperson of the board;
  - (5) The University of Hawaii—the president of the University of Hawaii;
  - (6) The department of education, excluding the Hawaii public library system—the superintendent of education; and
  - (7) The division of community hospitals within the department of health—the deputy director for community hospitals; and
  - (8) (7) The remaining departments of the executive branch of the State and all governmental bodies administratively attached to them—the administrator of the state procurement office of the department of accounting and general services.
- (b) The chief procurement officers for each of the several counties shall be:
- (1) The executive branch—the respective finance directors of the several counties; and
  - (2) The legislative branch—the respective chairpersons of the councils of the several counties;

provided that the chief procurement officers designated under paragraphs (1) and (2) shall not exercise their powers or duties over contracting in a manner contrary to the respective county’s charter, ordinances, or rules adopted in accordance with chapter 91.

(c) For purposes of applying this chapter to the judiciary, houses of the legislature, office of Hawaiian affairs, department of education, [division of community hospitals within the department of health,] University of Hawaii, remaining departments of the executive branch and all governmental bodies administratively attached to them, and the several counties, unless otherwise expressly provided, “State” shall mean “judiciary,” “state senate,” “state house of representatives,” “office of Hawaiian affairs,” “department of education,” [“division of community hospitals within the department of health,”] “University of Hawaii,” “executive branch,” and “county,” respectively.”

SECTION 6. Section 103D-204, Hawaii Revised Statutes, is amended to read as follows:

“**§103D-204 [Administrator] Establishment of the state procurement office[.]; administrator.** (a) There shall be a state procurement office, placed for administrative purposes only, within the department of accounting and general services, which shall be headed by the administrator of the state procurement office. The administrator shall be the chief procurement officer for [the] those governmental bodies of the executive branch [other than the University of Hawaii, the department of education, and the division of community hospitals within the department of health, and those governmental bodies administratively attached thereto.] as provided in section 103D-203(a)(7). The administrator shall be a full-time public official. The administrator shall serve a term of four years, and shall be paid the salary established for deputies or assistants to department heads under section 26-53

without diminution during the administrator's term of office unless by general law applying to all deputies or assistants to department heads.

(b) The administrator shall be appointed by the governor from a list of no less than three and no more than five names submitted by the policy [office.] board. The appointment of the administrator shall require the advice and consent of the senate. The administrator may only be removed from office by the governor, provided the governor shall give prior notification of such removal to the chairperson of the policy [office,] board, the president of the senate, and the speaker of the house of representatives.

(c) The administrator shall have:

- (1) A minimum of five years experience in public procurement within twelve years preceding the date of appointment; and
- (2) Demonstrated executive and organizational ability.

(d) [The procurement office shall be assigned for administrative purposes to the department of accounting and general services; provided that the] The administrator shall operate independently of the comptroller. The administrator may appoint and dismiss a private secretary without regard to chapter 76 or 77, who shall serve at the administrator's pleasure. The comptroller shall provide support to permit the administrator to satisfy all of the administrator's responsibilities as the chief procurement officer for those governmental bodies of the executive branch of the State for which a chief procurement officer is not otherwise designated."

SECTION 7. Section 103D-304, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) Contracts for professional services of less than ~~[\$10,000]~~ \$25,000 may be negotiated by the head of a purchasing agency, with any two persons who appear on the list of qualified persons established pursuant to subsection (c). Negotiations shall be conducted in the manner set forth in subsection (e) but without establishing any order of preference."

SECTION 8. Section 103D-305, Hawaii Revised Statutes, is amended to read as follows:

**"§103D-305 Small purchases; prohibition against parceling.** Procurements of[:

- (1) Less than \$10,000 for goods or services; or
- (2) Less than \$25,000 for construction;]

less than \$25,000 for goods, services, or construction shall be made in accordance with procedures set forth in rules adopted by the policy [office] board that are designed to ensure administrative simplicity and as much competition as is practicable; provided that multiple expenditures shall not be created at the inception of a transaction or project so as to evade the requirements of this chapter; and provided further that procurement requirements shall not be artificially divided or parceled so as to constitute a small purchase under this section."

SECTION 9. Section 103D-308, Hawaii Revised Statutes, is amended to read as follows:

**"[[§103D-308]] Cancellation of invitations for bids or requests for proposals.** An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interests of the governmental body which issued the invitation, request, or other solicitation, in accordance with

rules adopted by the policy [council.] board. The reasons therefor shall be made part of the contract file.”

SECTION 10. Section 103D-310, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§103D-310]]~~ **Responsibility of [bidders and] offerors.** (a) Unless the policy [office,] board, by rules, specifies otherwise, before submitting [a bid,] an offer, a prospective [bidder,] offeror, not less than ten calendar days prior to the day designated for opening [bids,] offers, shall give written notice of the intention to [bid] submit an offer to the procurement officer responsible for that particular procurement.

[The] (b) Whether or not an intention to bid is required, the procurement officer shall [then] determine whether the prospective [bidder] offeror has the financial ability [to deliver the goods or perform the work required, and whether the bidder has experience and competence in delivering similar goods or performing similar work,], resources, skills, capability, and business integrity necessary to perform the work. For this purpose, the officer, in the officer’s discretion, may require any prospective [bidder] offeror to submit answers, under oath, to questions contained in a standard form of questionnaire to be prepared by the policy office[, setting forth a complete statement of the experience of the prospective bidder and the bidder’s organization in delivering similar goods or performing similar work and a statement of the equipment proposed to be used, together with adequate proof of availability of the equipment]. Whenever it appears [to the officer,] from answers to the questionnaire or otherwise, that the prospective [bidder] offeror is not fully qualified and able to perform the intended work, [the officer, after affording the prospective bidder an opportunity to be heard and if still of the opinion that the bidder is not fully qualified to perform the work, shall refuse to receive or consider any bid offered by the prospective bidder. All information contained in the answers to the questionnaire shall be and remain confidential, and any government officer or employee who knowingly divulges or permits to be divulged any such information to any person not lawfully entitled thereto shall be fined not more than \$250. Questionnaires so submitted shall be returned to the bidders after having served their purpose.

(b) A) a written determination of nonresponsibility of [a bidder or] an offeror [based upon the information collected and the hearing conducted by the procurement officer] shall be made by the head of the purchasing agency, in accordance with rules adopted by the policy [office.] board. The unreasonable failure of [a bidder or] an offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such [bidder or] offeror. The decision of the head of the purchasing agency shall be final unless the [bidder or] offeror applies for administrative review pursuant to section 103D-709.

(c) Information furnished by [a bidder or] an offeror pursuant to this section shall not be disclosed to any person [not lawfully entitled thereto without prior written consent by the bidder or offeror.] except to law enforcement agencies as provided by chapter 92F.”

SECTION 11. Section 103D-321, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The chief procurement officer shall maintain a record of all procurements for goods, services, or construction of \$25,000 or more made under sections

103D-102(b)(4), 103D-304, 103D-306, and 103D-307 for a minimum of five years. The record shall contain:

- (1) Each contractor's name;
- (2) The amount and type of each contract; and
- (3) A listing of the goods, services, or construction procured under each contract."

SECTION 12. Section 103D-325, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The policy [office] board shall [adopt rules specifying] specify the form of the bonds required by this chapter[.] by procurement directive."

SECTION 13. Chapter 103D, Hawaii Revised Statutes, is amended by amending the title of part VIII to read as follows:

**"PART VIII. [INTERGOVERNMENTAL] GOVERNMENTAL RELATIONS AND COOPERATIVE PURCHASING"**

SECTION 14. Section 103D-801, Hawaii Revised Statutes, is amended:

1. By adding two definitions to be appropriately inserted and to read as follows:

"External procurement unit" means any buying organization not located in this State which, if located in this State, would qualify as a public procurement unit. An agency of the United States is an external procurement unit.

"Nonprofit private procurement unit" means a nonprofit health or human services organization that receives public funds to provide services to the public."

2. By amending the definition of "cooperative purchasing" to read as follows:

"Cooperative purchasing" means procurement conducted by[, or on behalf of, more than one public procurement unit, or by a public procurement unit with an external procurement activity.] a public or external procurement unit with one or more public procurement units, external procurement units, or nonprofit private procurement units, pursuant to this chapter."

SECTION 15.<sup>1</sup> Section 103D-802, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~103D-802] Cooperative purchasing authorized. A public procurement unit may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of goods, services, or construction with one or more public procurement units, external procurement [activities,] units, or nonprofit private [health and human services organizations] procurement units pursuant to rules adopted by the policy [office] board and an agreement entered into between the participants. The cooperative purchasing may include, but shall not be limited to, joint or multi-party contracts between public procurement units, and [open-ended] state public procurement unit requirements contracts which are made available to local public procurement units. Cooperative purchasing agreements may be exempt from preferences pursuant to part X."

SECTION 16.<sup>1</sup> Section 103D-1002, Hawaii Revised Statutes, is amended to read as follows:

**“§103D-1002 Hawaii products.** (a) [In any expenditure of public funds, a] 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], does 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 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.]

(b) All invitations for bids and requests for proposals shall include a description of the products that are listed in the Hawaii products list established pursuant to this section, and their established classes, which may be used to complete the scope of work specified in the invitation for bids or request for proposals, where the products are available and meet the minimum specifications.

(c) All persons submitting bids or [offers based on non-Hawaii products to any purchasing agency] proposals to claim a Hawaii products preference shall designate in their bids which individual product and its price is to be supplied as a [non-Hawaii] 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.]

(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 bid or offered for a Hawaii product item shall be decreased by subtracting therefrom: three per cent, five per cent, or ten per cent for the class I, class II, or class III Hawaii product items bid or offered, respectively. 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) [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).] (h). 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) (h) 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 17.<sup>1</sup> Section 103D-1003, Hawaii Revised Statutes, is amended to read as follows:

**“[[§103D-1003]] Printing, binding, and stationery work.** (a) [All printing, binding, and stationery work for the State or any county shall be performed within the State.] All bids or proposals submitted for a printing, binding, or stationery contract in which all work will be performed in-state, including all preparatory work, presswork, bindery work, and any other production-related work, [and all requests for bids or contracts for this work shall so stipulate; provided that whenever it is established that this work cannot be performed within the State or that the lowest price for which the work can be procured within the State exceeds the bid or charge of a mainland manufacturer of the item by fifteen per cent, the work or any part thereof so affected may be performed outside the State.

(b) No payment shall be made by the State or any county for printing, binding, or stationery work unless it appears that the work was done within the State or was authorized to be done outside the State pursuant to this section. In addition, any manufacturer violating a stipulation in a bid or contract that all work will be performed within the State shall be subject to a civil penalty in an amount not to exceed the bid or contract price to be collected by a civil action filed by the attorney general on behalf of the State.

(c) The policy [office] board<sup>2</sup> shall adopt rules to implement this section.] shall receive a fifteen per cent preference for purposes of bid or proposal evaluation.

(b) Where bids or proposals are for work performed in-state and out-of-state, then for the purpose of selecting the lowest bid or evaluating proposals submitted only, the amount bid or proposed for work performed out-of-state shall be increased by fifteen per cent. The lowest total offer, taking the preference into consideration, shall be awarded the contract unless the solicitation provides for additional award criteria. The contract amount awarded, however, shall be the amount of the price offered, exclusive of the preference.’”

SECTION 18.<sup>1</sup> Section 103D-1006, Hawaii Revised Statutes, is amended to read as follows:

“[[§103D-1006]] **Software development businesses.** (a) In any expenditure of public funds for software development, the use of Hawaii software development businesses shall be preferred. Where a package bid or response to a request for proposal contains both Hawaii and non-Hawaii software development businesses, then for the purpose of selecting the lowest bid or purchase price only, the bid or offer by a non-Hawaii software [developmental center] development business shall be increased by a preference percentage pursuant to rules adopted [in accordance with chapter 91.] by the policy board.

[ (b) The policy office shall adopt rules to implement this section.

(c) (b) This section shall not apply when precluded by federal requirements for competitive bidding.”

SECTION 19.<sup>1</sup> Act 193, Session Laws of Hawaii 1994, is amended by amending section 5, as amended by section 27 of Act 262, Session Laws of Hawaii 1996, to read as follows:

“SECTION 5. This Act shall take effect upon its approval[; provided that section 2 shall be repealed on June 30, 1998, and section 103D-203, Hawaii Revised Statutes, shall be reenacted in the form in which it existed on the day before the effective date of this Act].”

SECTION 20.<sup>1</sup> Section 103-45.5, Hawaii Revised Statutes, is repealed.

SECTION 21.<sup>1</sup> Section 103D-801 is amended by repealing the definition of “external procurement activity.”

[“External procurement activity” means any buying organization not located in this State which, if located in this State, would qualify as a public procurement unit. An agency of the United States is an external procurement activity.”]

SECTION 22.<sup>1</sup> Section 237-45, Hawaii Revised Statutes, is repealed.

SECTION 23.<sup>1</sup> Sections 103-24.6, 103D-102, 103D-104, 103D-202, 103D-205, 103D-208, 103D-211, 103D-213, 103D-214, 103D-302, 103D-303, 103D-304, 103D-306, 103D-310, 103D-311, 103D-312, 103D-313, 103D-322, 103D-323, 103D-324, 103D-401, 103D-501, 103D-601, 103D-701, 103D-702, 103D-703, 103D-704, 103D-709, 103D-804, 103D-901, 103D-902, 103D-1004, 103D-1005, 103D-1103, 103D-1105, 103D-1107, 103D-1201, 103D-1202, 103D-1203, and 201-82 are amended by substituting the words “policy board” wherever the words “policy office” appear, as the context requires.

SECTION 24.<sup>1</sup> Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>3</sup>

SECTION 25.<sup>1</sup> This Act shall take effect on October 1, 1997; provided that section 3 shall take effect on July 1, 1997.

(Approved July 3, 1997.)

#### Notes

1. Section redesignated.
2. So in original.
3. Edited pursuant to HRS §23G-16.5.