

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendments to Chapter 3-124
Hawaii Administrative Rules

April 24, 2012

Historical Note. This amendment of Chapter 3-124, Hawaii Administrative Rules, Subchapter 1, replaces interim rules effective 12/13/10 (file no. 2959).

1. Chapter 3-124, Hawaii Administrative Rules entitled "Preferences", is amended by amending Subchapter 1, entitled "Hawaii Products", to read as follows:

"SUBCHAPTER 1

HAWAII PRODUCTS

§3-124-1 Purpose. The purpose of this subchapter is to provide procedures for qualifying and registering products on the Hawaii products list and for ~~[the application of preferences thereof.]~~ applying preferences to those products. The objective is to promote the use of Hawaii products, as defined in section 103D-1001, HRS, by state purchasing agencies. [Eff 12/15/95; comp 11/17/97; am and comp 11/25/02; am and comp 5/20/04; am MAY 07 2012] (Auth: HRS §103D-202) (Imp: HRS §103D-1002)

§3-124-1.01 Applicability. (a) These rules shall apply to all solicitations made pursuant to sections 103D-302 and 103D-303, HRS, issued by a ~~[purchasing agency]~~ procurement officer when a registered and qualified Hawaii product is available ~~[where the product is required].~~

(b) These rules shall not apply whenever the application will disqualify any government agency from receiving federal funds or aid. [Eff and comp 11/17/97; comp 11/25/02; am and comp 5/20/04; am MAY 07 2012] (Auth: HRS §103D-202) (Imp: HRS §103D-1002)

§3-124-2 Definitions. Definitions are in section

103D-1001, HRS. The following definitions also apply to this [~~chapter~~] subchapter:

~~["Hawaii input" means that part of the cost of a product 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 the materials in Hawaii;~~
- ~~(2) The added value of that portion of the cost of imported materials that is incurred after landing in Hawaii;~~
- ~~(3) The cost of labor, variable overhead, utilities, and services incurred in the production and manufacturing of materials or products in the State;~~
- ~~(4) Fixed overhead cost and amortization or depreciation cost, if any, for buildings, tools and equipment situated and located in the State and utilized in the production or manufacturing of a product.]~~

"Hawaii products list" means the list [~~published~~] compiled by the administrator [~~itemizing those~~] of products [~~that have been found qualified~~] approved as Hawaii products, the names and addresses of the manufacturers, the classes and preference percentages [~~that~~] the products will be allocated [~~if they~~] to meet the requirements for which offers are solicited.

"Non-Hawaii product" means a product that is not registered or qualified [~~on the~~] as a Hawaii [~~products list~~] product.

"Registered Hawaii product" means a Hawaii product [~~that is registered on the~~] approved by the administrator as a Hawaii [~~products list~~] product and included on the Hawaii product list.

"Qualified Hawaii product" means a product that has been reviewed, qualified, and approved by the procurement officer of a specific solicitation. [Eff 12/15/95; comp 11/17/97; am and comp 11/25/02; am and comp 5/20/04; am ^{MAY 07 2017}] (Auth: HRS §103D-202) (Imp: HRS §103D-1002)

§3-124-3 Qualification procedure. (a) A Hawaii product requires over fifty per cent Hawaii input towards the total cost of the product for:

- (1) Class I products mined, excavated, produced, manufactured, in the State; or

- (2) Class II products are agricultural, aquacultural, horticultural, silvicultural, floricultural, or livestock product raised, grown, or harvested in the State.

(b) The responsibility for obtaining qualification shall rest upon the person desiring the preference by submitting an application either to the administrator or to the procurement officer of a specific solicitation. Any person desiring a preference pursuant to this subchapter, ~~[must]~~ shall have the product(s) qualified and registered on the Hawaii products list~~[-]~~ as follows:

- (1) An application for Hawaii product preference may be submitted to the procurement officer at the time a solicitation is issued, provided the product meets the solicitation requirements or any other criteria, prior to the due date specified in the solicitation. An addendum, if applicable, shall be issued to notify potential offerors of a qualified Hawaii product for the solicitation which the approval was requested; or

- (2) ~~[The responsibility for qualification shall rest upon the person desiring the preference. The product(s) shall be found qualified and on the Hawaii products list before a preference may be granted.]~~ Persons desiring to qualify their product(s) by registering with the state procurement office shall complete [an application according to instructions] the application and file with the administrator.

(c) Financial information submitted ~~[to the administrator pursuant to these rules]~~ for the purpose of determining classification of a product shall be treated as confidential ~~[when a person has made a written request for confidentiality]~~. In accordance with chapter 92F, HRS, the administrator or the procurement officer shall properly safeguard [such] the information and shall not make it available to the public.

~~[(b) A single application may be submitted for more than one product; however, separate data sheets~~

~~shall be submitted for each product for which registration is requested. Further, it is necessary that each]~~ (d) Each product shall be specified clearly and not by broad category of product.

~~[-e)]~~ (e) Cost data for each product shall reflect the product's actual total production cost per unit. [for the most recent full accounting period. If a product has not been in production during the full accounting period, approval may be granted based on cost data representing that shorter period.]

~~[-d)]~~ (f) ~~[If upon]~~ Upon completion of the review as whether a product is a qualified Hawaii product, if the [administrator] procurement officer finds that a product has qualified as a Hawaii product, the [administrator] procurement officer shall [se] notify the approved applicant in writing of the qualified Hawaii product(s), and submit the approved application to the state procurement office within five working days of the approved date. Within five working days of receiving the approved application from the procurement officer, the administrator shall list the qualified Hawaii product on the Hawaii products list as a registered Hawaii product[-] with its effective date, unless upon further review by the administrator the product is determined not qualified [and notify the chief procurement officers and heads of purchasing agencies or designees of the decision]. Applicants whose products do not qualify as a Hawaii product for a solicitation or for the Hawaii products list shall be notified in writing of the decision and the reasons [therefor].

(g) Non-approved applicants may appeal the decision of the administrator or the procurement officer:

- (1) [Any applicant whose product was determined not to qualify for registration on the Hawaii products list or who contests the classification may resubmit their application within thirty days addressing the reasons therefore] The applicant shall file a written request for reexamination of facts to the administrator within five working days of the notification date. The administrator shall respond to the applicant within thirty days and shall have the sole discretion in determining qualification for the preference [-]; or
- (2) The applicant shall file a written request for reexamination of facts to the procurement

officer for a specific solicitation within five working days of the notification date. The procurement officer shall respond to the applicant within five working days and shall have the sole discretion in determining the preference qualification.

~~[(e)]~~ (h) Should the administrator receive a request challenging the validity of the qualification, classification, or reexamination of a Hawaii product, the administrator may request an audit of the information provided should the need arise to determine if the ~~[proper classification of the]~~ product is qualified as defined under Hawaii product in section 103D-1002, HRS. A request for audit shall be sent to the person having requested registration of the product on the Hawaii products list, and the person shall bear the cost of the audit. The administrator or procurement officer may also request any additional information determined necessary in order to qualify or determine proper classification. ~~[The administrator shall approve or reject the classification for each Hawaii product and advise the applicant or contractor within thirty days after receipt of information.]~~

(i) Should the procurement officer receive a request to challenge the validity of the qualification, classification, or reexamination of a Hawaii product, the request shall be received not later than five working days after the issuance of the written notification, and shall contain a specific statement of the factual grounds upon which reversal is sought. The determination required by this section shall be final and conclusive unless clearly erroneous, arbitrary, capricious, or contrary to law.

~~[(f)]~~ (j) Application, renewal, and other forms required shall be provided by the administrator. [Eff 12/15/95; comp 11/17/97; am and comp 11/25/02; comp 5/20/04; am MAY 07 2012] (Auth: HRS §103D-202) (Imp: HRS §§92F-14, 103D-1002)

§3-124-4 Solicitation procedure. (a) Solicitations to which this preference is applicable shall refer to this subchapter and shall also contain a notice ~~[referring to the place]~~ where the Hawaii products list ~~[may be examined]~~ is available.

(b) To be eligible for preference, a product shall be qualified and registered on the Hawaii products list.

(1) ~~[The]~~ A Hawaii product approved by the state

procurement office shall have an effective date of [when a product is determined to be qualified and registered on the Hawaii products list is] one month after the product has been approved [by the state procurement office].

- (2) The procurement officer shall specify in the public notice and solicitation the application due date and instructions for submittal. The due date shall be at least five working days after the public notice release date for bids pursuant to section 103D-302, HRS, and at least ten working days after the public notice release date for proposals pursuant to section 103D-303, HRS. The procurement officer shall issue addenda of new qualified Hawaii product(s).

(c) To be listed in a solicitation, the effective date when a product was qualified and registered on the Hawaii products list shall be no later than the date a solicitation is first publicly advertised.

~~[(d) The classification of a registered Hawaii product on the date a solicitation is first publicly advertised shall determine the preference allowed the product.]~~

~~[(e)]~~ (d) Prospective offerors shall be informed of the registered Hawaii product and its established class that meets the requirements for which offers are being solicited.

- (1) When more than one registered Hawaii product meeting minimum requirements is available, a schedule describing all registered Hawaii products and their established classes shall be included in the solicitation.
- (2) ~~[Purchasing agencies]~~ The procurement officer shall provide in the solicitation appropriate space(s) for offerors to indicate selection of the Hawaii products preference and to list the Hawaii product and its price f.o.b. jobsite, unloaded, including applicable general excise tax and use tax. [Eff 12/15/95; am and comp 11/17/97; am and comp 11/25/02; comp 5/20/04; am
MAY 07 2012] (Auth: HRS §103D-202) (Imp: HRS §103D-1002)

§3-124-5 Evaluation procedure and contract award.

- (a) ~~[In any expenditure of public funds resulting~~

~~from a contract award, a purchasing agency shall purchase any required product from the Hawaii products list where the registered Hawaii product is available, provided the product meets the specifications and the selling price f.o.b. jobsite, unloaded, including applicable general excise tax and use tax and does not exceed the lowest delivered price in Hawaii f.o.b. jobsite, unloaded, including applicable general excise tax and use tax, of a similar non Hawaii product by more than three per cent, where class I registered Hawaii products are involved, or five per cent where class II registered Hawaii products are involved, or ten per cent where class III registered Hawaii products are involved.] An application submitted with the offer shall be accepted by the procurement officer for determination review as prescribed in section 3-124-3.~~

(b) For evaluation purposes, no preference shall be considered when only registered Hawaii products are offered.

(c) Where offers include both registered Hawaii products and non-Hawaii products, for the purpose of determining the lowest evaluated offer, the offer for the Hawaii product shall be decreased by its applicable ~~[three per cent, five per cent, or]~~ ten per cent or fifteen per cent classification preference.

(d) The contract amount shall be the amount of the price offered, exclusive of any preference.

(e) Should more than one preference allowed by statute apply, the evaluated price shall be based on application of applicable preferences in the order specified below. The preferences (1) through (7) in this subsection shall be applied to the original prices. The sum of the preferences, where applicable, shall be added to the original price, except that preferences (1) and (4) shall be subtracted from the Hawaii products or recycled products price.

- (1) Hawaii products list, pursuant to section 103D-1002, HRS;
- (2) Tax adjustment for tax exempt offerors, pursuant to section 103D-1008, HRS;
- (3) Preferred use of Hawaii software development businesses, pursuant to section 103D-1006, HRS;
- (4) Recycled products, pursuant to section 103D-1005, HRS;
- (5) Reciprocal preference, pursuant to section 103D-1004, HRS;
- (6) Printing, binding, and stationery work within the State, pursuant to section 103D-1003,

HRS;

(7) Preference for persons with disabilities, pursuant to section 103D-1009, HRS.

(f) Should the price comparison for bids submitted pursuant to section 103D-302, HRS, after taking into consideration all applicable preferences, result in identical total prices, award shall be made to the offeror offering a registered Hawaii product in preference to a non-Hawaii product.

(g) For proposals submitted pursuant to section 103D-303, HRS, and after taking into consideration all applicable preferences, the procurement officer shall award the contract pursuant to section 3-122-57. [Eff 12/15/95; am and comp 11/17/97; am and comp 11/25/02; am and comp 5/20/04; am **MAY 07 2012**] (Auth: HRS §103D-202) (Imp: HRS §103D-1002)

§3-124-6 Change in class status. (a) A person whose product is on the Hawaii products list shall be responsible for informing the administrator of:

(1) A change to the method of production or the relative values of the Hawaii and non-Hawaii inputs to the production cost of the product(s), which could affect the product(s) classification;

(2) The discontinuation of product; or

(3) [any] Any change affecting the classification or qualification of the product [within sixty days of the change].

(b) ~~[If, since the original application, there has been a]~~ Any [change] changes affecting [in] either the method of production or the relative values of the Hawaii and non-Hawaii inputs to the production cost of the product(s), which could affect the product(s) classification, a new application [must] shall be submitted to the administrator within [sixty] five working days of the change. The administrator shall make a determination within fifteen working days of submittal of new application of product classification.

(c) Any change on a product application submitted as part of an offer that materially alters the offeror's ability to supply the Hawaii product:

(1) The offeror shall notify the procurement officer of the change no later than five working days from when the offeror knows of the change by submitting a letter to the procurement officer, explaining why the Hawaii product is not available, the

estimated date it will be available, and if applicable, attach a confirmation letter from the manufacturer or producer of the Hawaii product.

- (2) The procurement officer shall notify the administrator within five working days of the receipt of the offeror's letter indicating the discontinuation of the Hawaii product or its availability. Upon receipt of the offeror's letter, the administrator shall review the letter and update the Hawaii product list accordingly. [Eff 12/15/95; comp 11/17/97; comp 11/25/02; comp 5/20/04; am] (Auth: HRS §103D-202)
 (Imp: HRS §103D-1002)

~~§3-124-7 [Biennial renewal. (a) All persons whose product(s) is registered on the Hawaii products list will be notified by the State thirty days prior to the date for biennial renewal or if a new application is required. A sixty-day grace period is allowed for both the renewal and the new application after the preference expiration date which normally will be the end of an accounting period.~~

~~(b) An affidavit for renewal shall be submitted if, since the filing of the original application, there has been no change in either the method of production or the relative values of the Hawaii and non-Hawaii inputs to the production cost affecting the product classification. Provided the administrator is satisfied that the classification of a registered Hawaii product is not changed, the administrator shall renew the registration and classification of the product.~~

~~(c) Failure to complete the biennial renewal or to provide any further information requested by the administrator shall be grounds for rejecting an application or for disqualification of the product.~~

~~(d) Any person receiving a notice for renewal for Hawaii products list qualification shall advise the administrator immediately if there is any reason why the person cannot comply within the sixty-day grace period.]~~ [Eff 12/15/95; comp 11/17/97; comp 11/25/02; comp 5/20/04; R MAY 07 2012] (Auth: HRS §103D-202)
 (Imp: HRS §103D-1002)

§3-124-8 Termination. If change of status is not

reported as required in section 3-124-6 [~~or if the biennial renewal is not provided as required by section 3-124-7~~], the administrator shall terminate the registration of the product [~~effective at the end of the sixty day grace period allowed~~]. Any person terminated that desires to be reinstated on the Hawaii products list shall submit a new application. [Eff 12/15/95; comp 11/17/97; comp 11/25/02; comp 5/20/04; am MAY 07 2012] (Auth: HRS §103D-202)
(Imp: HRS §103D-1002)

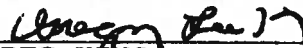
§3-124-9 (Reserved)."

2. Material, except source notes, to be repealed is bracketed. New material is underscored.


3. Additions to update source notes to reflect these amendments are not underscored.

4. These amendments of chapter 3-124, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the forgoing are copies of the rules, drafted in Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on April 24, 2012 by the Procurement Policy Board and filed with the Office of the Lieutenant Governor.



GREG KING
Chairperson
Procurement Policy Board



DEAN H. SEKI
State Comptroller

APPROVED AS TO FORM:

A handwritten signature in black ink, appearing to be 'R. L. ...', written over a horizontal line.

Deputy Attorney General