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October 8, 2009

PROCUREMENT CIRCULAR NO. 2009-13

TO: Office of the Governor
Office of the Lieutenant Governor
Executive Department Heads
State Librarian
Chief Procurement Officers

FROM: Aaron S. Fujioka 

SUBJECT: ACT 175, SLH 2009: PART II, SECTIONS 4 to 6
Guidance on Hawaii Products Preference

This circular is a follow-up to Procurement Circular No. 2009-07 on *2009 Procurement Related Legislation* for guidance and information on ACT 175, SLH 2009 effective as of July 1, 2009.

PART II Procurement Preferences of ACT 175, SLH 2009 amendments are:

- Creates new section for failure to adequately verify, deliver, or supply Hawaii products;
- Adds new definition for "Hawaii input", and amends "Hawaii products" definition;
- Changes Class I to a 10% preference provided the Hawaii input is over 50%, and Class II to a 15% preference when any agricultural, aquacultural (aqua-farming), horticultural, silvicultural (forestry), floricultural (flower farming), or livestock product is raised, grown, or harvested in the state; and
- Provides for the manufacturer's or producer's self-certification of Hawaii products submitted as part of the solicitation offer.

Effective July 1, 2009, the Hawaii Products List was suspended. Previously qualified Hawaii product vendors have been notified to re-apply to the State Procurement Office (SPO) so that we may reestablish the list. Additionally, HAR Chapter 3-124, Subchapter 1 on Hawaii Products will be amended to incorporate the changes due to ACT 175, SLH 2009.

The attached guidance is provided effective immediately.

Your staff may contact Kevin Takaesu at 586-0568, or at kevin.s.takaesu@hawaii.gov if they have any questions, or you may call me at 587-4700.

Attachment

ATTACHMENT: Guidance for Hawaii Products Preference

Procurement Officer shall:

- I. When preparing solicitation, determine that products listed in solicitation may be applicable to the Hawaii product preferences.
- II. Prior to release of a solicitation, view current updated Hawaii Products List posted on the SPO website at <http://hawaii.gov/spo>, click on 'Procurement of Goods, Services, and Construction-Chapter 103D, HRS'; under 'Procurement', click on 'Preferences', 'Hawaii Products', and select 'Hawaii Products List'. Review the current listing of certified qualified Hawaii products to complete the scope of work for the invitation for bid (IFB) or request for proposals (RFP).
- III. Provide the form SPO-38, *Certification for Hawaii Product Preference* in the solicitation or direct to SPO webpage to allow any persons providing a Hawaii product mined, excavated, produced, manufactured, raised, or grown in Hawaii, including any agricultural, aquacultural, horticultural, silvicultural, floricultural, or livestock product raised, grown, or harvested in Hawaii to certify and qualify their product(s).
 - A. Form SPO-38 shall be completed by the company that is manufacturing or producing the product in Hawaii.
 1. For each product, one form shall be completed and submitted (i.e. 3 products should have 3 separate forms completed).
 2. Qualification for preference is based on:
 - Class I - 10% preference
Hawaii input must exceed 50% (No. 13)
 - Class II -15% preference
Product shall be agricultural, aquacultural, horticultural, silvicultural, floricultural, or livestock product raised, grown, or harvested in the state of Hawaii. ("Yes" is checked for No. 11)
 3. Procurement Officer (PO) may request additional information deemed necessary to qualify a product, and has sole discretion to determine preference qualification.
 - B. Procurement notice and solicitation (see Examples) shall state the due date to submit the *Certification for Hawaii Product Preference* form prior to the deadline for receipt of offer(s).
 - C. PO shall review the submitted *Certification for Hawaii Product Preference* to determine if the product(s) qualify for the preference, and may request additional information deemed necessary to qualify the product(s).

PROCUREMENT CIRCULAR NO. 2009-13

October 8, 2009

Page 3 of 5

- D. Issue an addendum notifying all potential offerors of the new certified and qualified Hawaii product(s) upon PO approval of the certification form.
- E. If product(s) is approved, PO to notify the Hawaii product vendor, and email copy of the approved *Certification for Hawaii Product Preference* to the SPO at state.procurement.office@hawaii.gov for inclusion on the Hawaii Products List.
- F. If product(s) is disapproved, PO to notify the Hawaii product vendor in writing of the PO determination.
- G. Any changes in the availability of the Hawaii product, or upon notification by the Hawaii product vendor of change, the purchasing agency shall notify the SPO at state.procurement.office@hawaii.gov to amend the Hawaii Products List, if applicable.
- H. Information submitted in the *Certification for Hawaii Product Preference* form shall be treated as confidential. The PO shall not disclose the form, pursuant to HRS §92F-13(3).

The SPO shall:

- I. Reestablish, and maintain the Hawaii Products List on the SPO website at <http://hawaii.gov/spo>, click on '*Procurement of Goods, Services, and Construction-Chapter 103D, HRS*'; under '*Procurement*', click on '*Preferences*', '*Hawaii Products*' and select '*Hawaii Products List*'.
- II. Update the Hawaii products list when new product(s) are approved, or when notified of changes to products.

PROCUREMENT CIRCULAR NO. 2009-13

October 8, 2009

Page 4 of 5

EXAMPLES

Sample Language to be included in Procurement Notice

The Hawaii products preference pursuant ACT 175, SLH 2009 is applicable for items (fill in no.) through (fill in no.) of this solicitation. Persons wishing to certify and qualify a product not currently listed as a Hawaii Product shall submit a *Certification for Hawaii Product Preference* (form SPO-38) to: (Fill in Name of the government agency, contact person, phone number, email and due date and time). View the current Hawaii Products List on the State Procurement Office (SPO) website at <http://hawaii.gov/spo>, click on 'Procurement of Goods, Services, and Construction-Chapter 103D, HRS'; under 'Procurement', click on 'Preferences', 'Hawaii Products' and select 'Hawaii Products List'.

For each product, one form shall be completed and submitted (i.e. 3 products should have 3 separate forms completed). The form is available on the SPO webpage at <http://hawaii.gov/spo> under the 'Quicklinks' menu; click on 'Forms for Vendors, Contractors, and Services Providers' to view and complete form SPO-38 online.

Late submittals for this solicitation will not be reviewed by this agency.

Sample Language to be included in Solicitation

HAWAII PRODUCTS PREFERENCE

In accordance with ACT 175, SLH 2009, the Hawaii products preference is applicable to this solicitation. Hawaii Products [are / may be] available for those items noted on the offer form.

The Hawaii products list is available on the SPO webpage at <http://hawaii.gov/spo>, click on 'Procurement of Goods, Services, and Construction-Chapter 103D, HRS'; under 'Procurement' click on 'Preferences', 'Hawaii Products' and select 'Hawaii Products List' to view.

Offeror offering a Hawaii Product (HP) shall identify the HP on the solicitation offer page(s). Any person desiring a Hawaii product preference shall have the product(s) certified and qualified if not currently on the Hawaii products list, prior to the deadline for receipt of offer(s) specified in the procurement notice and solicitation. The responsibility for certification and qualification shall rest upon the person requesting the preference.

Persons desiring to qualify their product(s) not currently on the Hawaii product list shall complete form SPO-38, *Certification for Hawaii Product Preference* and submit to the Procurement Officer, and provide all additional information required by the Procurement Officer. For each product, one form shall be completed and submitted (i.e. 3 products should have 3 separate forms completed). Form SPO-38 is available on the SPO webpage at <http://hawaii.gov/spo> under the 'Quicklinks' menu; click on 'Forms for Vendors, Contractors, and Service Providers'.

PROCUREMENT CIRCULAR NO. 2009-13

October 8, 2009

Page 5 of 5

When a solicitation contains both HP and non-HP, then for the purpose of selecting the lowest bid or purchase price only, the price offered for a HP item shall be decreased by subtracting 10% for the class I or 15% for the class II HP items offered, respectively. The lowest total offer, taking the preference into consideration, shall be awarded the contract unless the offer provides for additional award criteria. The contract amount of any contract awarded, however, shall be the amount of the price offered, exclusive of the preferences.

Change in Availability of Hawaii product. In the event of any change that materially alters the offeror's ability to supply Hawaii products, the offeror shall immediately notify the procurement officer in writing and the parties shall enter into discussions for the purposes of revising the contract or terminating the contract for convenience.

Sample Language to be included in the Solicitation's Offer Page

The following offer is hereby submitted for Disposable Polyethylene Bags, as specified herein:

<u>Item No.</u>	<u>Description</u>	<u>Recycled Product (X)</u>	<u>Estimated Quantity (Bags)</u>	<u>Unit Bid Price Per Bag</u>	<u>Estimated Total Bid Price</u>
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GROUP 1. LOW/LINEAR LOW DENSITY POLYETHYLENE

A Hawaii Product and a Recycled Product preference is available for Items 1 to 7. In accordance with the Special Provisions, Offerors **shall** indicate below whether or not a Hawaii Product is being offered. Offerors offering a Hawaii Product shall specify the product and class of the product offered.

1. 24" (15" x 9")W x 24"L

10 gal. capacity, 1 mil minimum

Net wt. per 500 bags: 19.1 lbs.
minimum

() 1,779,400 \$ _____ \$ _____

Non-Hawaii Product

Dimensions _____

Hawaii Product

Packaging _____

Class I **Class II**

Net wt. per case _____

Brand Name & Product No. _____