



10 OCT 28 P1:44

STATE PROCUREMENT OFFICE
NOTICE OF AND REQUEST FOR EXEMPTION FROM CHAPTER 103D, HRS
STATE PROCUREMENT OFFICE
STATE OF HAWAII

1. TO: Chief Procurement Officer
2. FROM: Department of the Attorney General

Department/Division/Agency

Pursuant to §103D-102(b)(4), HRS, and Chapter 3-120, HAR, the Department requests a procurement exemption to purchase the following:

3. Description of goods, services or construction:
The Department of the Attorney General, on behalf of the Department of Health ("DOH"), requires the following legal services from Kunio Kuwabe, Esq. of Hisaka Yoshida & Cosgrove. Mr. Kuwabe shall represent the Director of Health as Movant in Conditional Release applications for the Hawaii State Hospital ("HSH") forensic patients pursuant to Hawaii Revised Statutes ("HRS") section 704-412; Motions for Findings and Fitness to Proceed to trial pursuant to section 704-406, HRS; Motions for Authorizations for Release on Conditions While Still Unfit; Motions for Authorizations for Involuntary Administration of Medication; Motions for Discharge from, or Modification of the Order Granting Conditional Release pursuant to HRS section 704-413; and Motions for Authorized Absence pursuant to section 334-75, HRS.

4. Name of Vendor: Hisaka Yoshida & Cosgrove Address: 737 Bishop Street, Suite 3000, Honolulu, HI 96813	5. Price: \$50,000.00
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6. Term of Contract: From: Upon CPO Approval To: 04/30/11 for SIX MONTHS via 11/12/10	7. Prior Exemption Ref. No.
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8. Explanation describing how procurement by competitive means is either not practicable or not advantageous to the State: Janice Futa of Hisaka Yoshida & Cosgrove was selected as a special deputy attorney general pursuant to section 103D-304, HRS, procurement of professional services. Ms. Futa was selected by a selection committee to represent the Director of Health in conditional release applications for HSH forensic patients pursuant to section 704-412, HRS, motions for findings of fitness to proceed to trial pursuant to section 704-406, HRS, motions for authorizations for involuntary administration of medication, motions for discharge from, or modification of the order granting conditional release pursuant to section 704-413, HRS, and motions for authorized absence pursuant to section 334-75, HRS. Ms. Futa's contract for special deputy services was from December 22, 2009 through December 22, 2011. On or about October 11, 2010, Ms. Futa abruptly left Hisaka Yoshida & Cosgrove to take a position at the Prosecutor's Office. (See Attachment A).

9. Details of the process or procedures to be followed in selecting the vendor to ensure maximum fair and open competition as practicable:
See Section 8, above.

10. A description of the agency's internal controls and approval requirements for the exempted procurement:
The Department will use the standard form Contract for Goods and Services for procurements exempt from the Procurement Code (AG-002 Rev. 07/24/2006), including the General Conditions (AG-008 Rev. 4/15/2009). Among other things, the contract will provide that its annual compensation and cost cap can be exceeded only if Mr. Kuwabe secures prior written approval of the Attorney General and the contract is so modified. The contract will also set out a detailed process for presenting and paying for invoices for services rendered, require the Attorney General's prior approval before any duties or responsibilities may be assigned or subcontracted, limit transportation and per diem reimbursements to coach class air travel, intermediate car rentals, and require all contract modifications to be in writing to be effective.

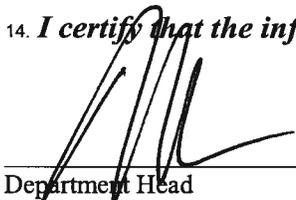
REQUEST FOR EXEMPTION FROM CHAPTER 103D, HRS (Cont.)

12. A list of agency personnel, by position, who will be involved in the approval process and administration of the contract:		
Name	Position	Involvement in Process
Mark J. Bennett	Attorney General	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Administration
Heidi M. Rian	Supervising Deputy Attorney General	<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration
Michelle E. Nakata	Deputy Attorney General	<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration
Chiyome L. Fukino	Director of Health	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Administration
Mark Fridovich	Administrator of HSH	<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration
David T. Moore	Administrative Service Officer	<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration

13. Direct inquiries to:	Department: Dept. of the Attorney General Contact Name: Michelle E. Nakata, DAG Phone Number: 587-3050 Fax Number: 587-3077
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Agency shall ensure adherence to applicable administrative and statutory requirements

14. *I certify that the information provided above is, to the best of my knowledge, true and correct.*



OCT 26 2010

Department Head

Date

Reserved for SPO Use Only

15. Date Notice Posted 10/28/2010

The Chief Procurement Officer is in the process of reviewing this request for exemption from Chapter 103D, HRS. Submit written objections to this notice to issue an exemption from Chapter 103D, HRS, within seven calendar days or as otherwise allowed from the above posted date to:

Chief Procurement Officer
 State Procurement Office
 P.O. Box 119
 Honolulu, Hawaii 96810-0119

Chief Procurement Officer's comments:

From information provided by the contact person, Ms. Michelle Nakata, she does not have the applicable written delegated procurement authority or training. Mr. David Moore, who has both written delegated authority and has completed the appropriate mandatory training, will be the contract administrator. As a reminder, Ms. Nakata shall not participate in any procurement activities until she has received both written delegated procurement authority and have completed the appropriate mandatory procurement training requirements for the applicable procurement method, pursuant to Procurement Delegation No. 2008-01 and Procurement Circular No. 2008-05. This approval is based on the department's representation that Mr. Kunio Kuwabe is the only attorney of the firm of Hisaka, Yoshida & Crosgrave, who has the knowledge and expertise necessary to continue the legal work for conditional patient release for the Hawaii State Hospital. This award is required to be posted on the Awards Reporting System.

16. **APPROVED** **DISAPPROVED** **NO ACTION REQUIRED**



 Chief Procurement Officer Date 11/16/2010

8. Explanation describing how procurement by competitive means is either not practicable nor advantageous to the State: (Continued)

Kunio Kuwabe, an associate at Hisaka Yoshida & Cosgrove, was the only attorney in the firm other than Ms. Futa, the principal attorney, authorized to provide legal services under the prior contract.

Mr. Kuwabe's familiarity with conditional release applications and fitness to proceed matters is a very important factor when looking at a potential contractor's qualifications. That combined with his extensive experience working with Ms. Futa as back-up coverage attorney, supports Mr. Kuwabe and his firm to provide the continued contracted services on behalf of the Department of the Attorney General.

It would not be practicable nor advantageous to the State to procure these services by competitive means at this time. The Department of Health, the funding agency, seeks to retain the services of Kunio Kuwabe for a six-month period because he is an experienced attorney in the substantive areas of law. He is familiar with the conditional release process and has worked with the former special deputy, Ms. Futa, on these cases. Continuity of legal services in the areas of releases and discharges from HSH is a priority for the DOH, as they are an important means for relieving pressure on the HSH patient census. One of Mr. Kuwabe's primary responsibilities will include filing applications for conditional release of patients from HSH. Based on past experience, it takes on average six months to train a new qualified attorney in this area of law. Since there are currently scheduled hearings in November and December, engaging a new attorney at this time would disrupt the process and would inevitably lead to significant delays in releases and discharges of patients from HSH and even higher census numbers at the hospital. The State could only benefit in keeping Kunio Kuwabe and the firm of Hisaka Yoshida & Cosgrove to provide continued legal services for a six-month period.

If this request for exemption is not approved, the Department would immediately need to procure special deputy services under the general process pursuant to 103D-304, HRS. Such action would result in a gap in coverage for conditional releases and the patient census at HSH will increase.

In addition, a short-term six month exempt contract would allow sufficient time for the Department of the Attorney General to go through the general procurement process to hire a special deputy.

Attachment A