

**STATE OF HAWAII  
REQUEST FOR EXEMPTION FROM CHAPTER 103D, HRS**

'04 JAN 23 A8

TO: Chief Procurement Officer

FROM: Attorney General  
(Department/Division Agency)

STATE PROCUREMENT OFFICE  
STATE OF HAWAII

Pursuant to § 103D-102(b)(5), HRS, and Chapter 3-120, HAR, the Department requests a procurement exemption to purchase the following:

**Description of goods, services, or construction:**

Services of a single private attorney to serve as a special deputy attorney general and as lead attorney to represent and defend the State, the Superintendent of Education, and the Department of Education in the following seven federal court cases: Mark H et al., v. Hamamoto, et al., Civil No. 00-00282DAE; Stephen L, et al., v. Hamamoto, et al., Civil No. 00-00338DAE; Alberta S., et al., v. Hamamoto, Civil No. 01-00366HG; Patrick W., et al., v. Hamamoto, et al., Civil No. 98-00843; Randalynne M. et al., v. Hamamoto, et al., Civil No. 03-0031SOM; Patricia N., et al., v. Hamamoto, et al., Civil No. 00-00252DAE; and Steven A. et al., v. Department of Education, et al., Civil No. 01-00680SOM

| Vendor:  | Cost:  | Term of Contract:  |
|--|--|--|
| John Komeiji, Esq.,<br>Watanabe Ing Kawashima &<br>Komeiji | Up to \$500,000.00 for attorneys' fees, up to \$100,000.00 for costs | From: Upon CPO Approval<br>To: Completion of all proceedings in all seven cases in the trial court |

**Explaining describing how procurement by competitive means is either not practicable or not advantageous to the State:**

Given the common threads described in the attached detailed discussion of the seven cases, Mr. Komeiji's professional skills and experiences, and personal qualities, and the trial schedule detailed below, we believe that it is in the best interest of the State to use a single experienced trial attorney to prepare and present the State's defense in the seven cases listed above, and that it is not possible to secure a single attorney for those services by the usual competitive means because of the time remaining before the first of seven trials is presently scheduled to begin.

Relying on a single attorney will avoid duplication, ensure that the defenses presented in each of the cases are coordinated and consistent, and allow the State to take advantage of various economies of scale. The State will not have to pay seven different attorneys to interact with the same plaintiffs' attorneys, familiarize themselves with the characteristics of autism and the needs of children who suffer from the disability, or prepare responses to almost identical legal arguments and strategies the plaintiffs' attorneys make in each of the seven cases. Because the same persons have been designated expert witnesses in several cases, depositions could be consolidated, and cross examination of those experts prepared only once if a single attorney represented the State. Similarly, directions from a single attorney would reduce duplication and result in more productive use of the time and resources of DOE personnel, and deputy attorneys general enlisted to assist in preparing the State's defense.

Mr. Komeiji is a skilled and highly regarded trial lawyer at the law firm of Watanabe Ing Kawashima & Komeiji. He has successfully asserted as well as defended against personal injury, contract, malpractice, and civil rights/discrimination claims in actions that depended upon the presentation of medical, psychological, and economic evidence to a jury in the U.S. District Court. He is practical, has confidence in common sense, and understands the intensity with which civil rights litigants, in particular, come to and hold their respective positions. He also is sensitive to the fact that emotions often run high on both sides of cases in which schools are alleged to have discriminated against disabled students. The Department's list of prequalified attorneys for FY 2004 does not currently include attorneys with skills, experience or personal qualities comparable to the ones Mr. Komeiji has and we believe are needed to defend the State in the seven cases.

Finally, jury trials are presently scheduled to begin in the seven cases on March 9, May 11, June 8, August 24, October 5, November 23, and December 7, 2004. The deputy attorneys general assigned to the seven cases are not as experienced as they need to be to take the cases to trial. There is insufficient time remaining before the first trial is scheduled to begin, to prepare specifications, and advertise and select a qualified attorney to handle all seven cases under Haw. Rev. Stat. §§ 103D-302 and -303, as well as allow the attorney selected to properly prepare the case for trial.

**Details of the process or procedure to be followed in selecting the vendor to ensure maximum fair and open competition as practicable:**

We are seeking this procurement exception (almost, but not exactly as though it were a sole source request) so that we can negotiate a contract with him directly. Mr. Komeiji is available and willing to provide the services we need and for the reasons discussed above we believe he is the most qualified to prepare and present the State's defense in the seven cases.

**A description of the agency's internal controls and approval requirements for the exemption procurement:**

The Department will use its Standard Form Agreement for Special Deputy Attorney General Services, and adhere to all DAGS accounting procedures for processing payments under the contract. The Attorney General will sign the agreement on behalf of the Department and the State.

**A list of agency personnel, by position title, who will be involved in the approval process and administration of the contract:**

Attorney General Mark Bennett; Supervising Deputy Attorney General Holly Shikada; Deputy Attorney General Charleen Aina.

**Direct questions to:**

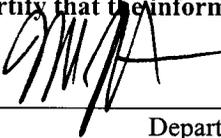
Mark J. Bennett, Attorney General  
Charleen Aina, Deputy Attorney General

**Phone Number:**

(808) 586-1282  
(808) 586-1286

This exemption should be considered for list of exemptions attached to Chapter 3-120, HAR: Yes: \_\_\_ No: X

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



Department/Agency Head

JAN 22 2004

Date

**Chief Procurement Officer's Comments:**

Please ensure adherence to applicable administrative requirements.

Approved

Denied

  
Chief Procurement Officer

1/30/04  
Date

cc: Administrator  
State Procurement

The plaintiffs in the seven cases, eight autistic students who are or were enrolled in public schools as special education students, and their parents, sue the State in the U.S. District Court, to recover damages. They allege that the DOE did not provide the students with a free appropriate public education (FAPE) as required by the Individuals with Disabilities Education Act (IDEA) and § 504 of the Vocational Rehabilitation Act. Until these seven cases were filed, special education litigation in the federal court was generally limited to class action suits like Felix, and individual appeals from administrative hearings in which special education students' parents dissatisfied with the educational and related services the DOE provided, challenged the appropriateness of the services and asked that their child's FAPE include different programs and placements than the DOE offered.

Common threads run through these cases - (1) the same law firm, Davis Levin Livingston Grande, represents all of the plaintiffs in all seven cases and the attorneys are experienced in litigating complex medical and special education "malpractice-like" cases; (2) the plaintiffs in all of the cases are autistic students and their parents; (3) many of the plaintiffs share the same expert witnesses (e.g., Barbara Bateman, Bryna Siegel, Beverly James); (4) plaintiffs' lawyers are aggressively relying on the same § 504/special education cases from other jurisdictions to assert that the students and their parents are entitled to personal injury or tort-type damages, including punitive damages (all cases), damages for emotional distress (all cases), pain and suffering (Randalyne M, Patrick W), assault and battery (Patrick W), and for reimbursements of out-of-pocket expenses incurred because DOE delivered services unsatisfactorily, if not negligently or with deliberate indifference (all cases), economic losses including lost opportunity because parents were forced to quit their jobs or unable to continue their education to secure better-paying jobs in order to educate and train their own children (Alberta S, Patricia N), and future expenses for assisted living because the students did not receive sufficient educational and related services to care for themselves as adults (Mark H, Stephen L); (5) the § 504 cases on which plaintiffs rely essentially stand for the proposition that the plaintiffs who sue under § 504 are entitled to the same remedies available in discrimination suits brought under Title VI of the Civil Rights Act of 1964; and (6) the State's attorney(s) will need to familiarize themselves as to the characteristics of autism and be sensitive to their needs and the needs of family and school personnel who of autistic children because the students who are plaintiffs are autistic.