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

1. TO: Chief Procurement Officer
2. FROM: 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:
Services of a private attorney to serve as special deputy attorney general, co-counsel, and lead trial attorney to represent and defend the State and the Department of Education in the cases of: Mark H., et al. v. Hamamoto, et al., Civil No. 00-00282MLR/LEK; Stephen L., et al. v. Hamamoto, et al., Civil No. 00-00338MLR/LEK; and Patricia N. et al. v. Hamamoto, et al., Civil No. 00-00252MLR/LEK.

4. Name of Vendor: Kenneth Robbins, Esq. Address: 841 Bishop Street, Suite 2200 Honolulu, Hawaii 96813	5. Price: \$Up to \$300,000
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6. Term of Contract: From: CPO Approval To: <i>Resolution of cases ca</i>	7. Prior Exemption Ref. No. 0
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8. Explanation describing how procurement by competitive means is either not practicable or not advantageous to the State:
See attached

9. Details of the process or procedures to be followed in selecting the vendor to ensure maximum fair and open competition as practicable:
We are seeking this procurement exemption almost, but not exactly as though it were a sole source request. We seek this exemption so that we can negotiate a contract directly with Mr. Robbins. Mr. Robbins 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 these cases.

10. A description of the agency's internal controls and approval requirements for the exempted procurement:
The Department will use its Standard Form Agreement for Special Deputy Attorney General Services, and will adhere to all DAGS accounting procedures for processing payments under the contract. The Attorney General or First Deputy will sign the agreement on behalf of the Department and the State.

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
Lisa M. Ginoza	First Deputy Attorney General	<input checked="" type="checkbox"/> Approval	<input checked="" type="checkbox"/> Administration
Holly T. Shikada	Deputy Attorney General	<input type="checkbox"/> Approval	<input checked="" type="checkbox"/> Administration
		<input type="checkbox"/> Approval	<input type="checkbox"/> Administration
		<input type="checkbox"/> Approval	<input type="checkbox"/> Administration

13. Direct inquiries to: Department: Attorney General
 Contact Name: Mark Bennett or Holly Shikada
 Phone Number: 586-1282 or 586-1266
 Fax Number: 586-1239 or 586-1488

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.*

for *J. M. King*
 Department Head

11/5/08
 Date

Reserved for SPO Use Only

15. Date Notice Posted 11/10/08

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:

This approval is based on the AG's Office representation that this attorney has specific knowledge and experience in this type of cases involving the Department of Education.

This approval is for the solicitation process only, HRS section 103D-310(c) and HAR section 3-122-112, shall apply.

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

Andrew S. J... 11/18/08
 Chief Procurement Officer Date

8. Explanation describing how procurement by competitive means is either not practicable or not advantageous to the State:

The Department of the Attorney General currently has an Agreement for Special Deputy Attorney General Services "Agreement" for the three (3) cases identified in this request for exemption. The existing Agreement entered into with John Komeiji, Esq. on January 30, 2004, through the granting of an exemption, initially encompassed seven (7) cases. Four (4) of the seven (7) cases were settled. For the same reasons that it made sense to have one attorney handle all seven (7) of the 504 cases when the State entered into the contract with Mr. Komeiji, it makes sense to keep the remaining three (3) 504 cases together and have the same attorney represent the State on all three (3).

In addition to these 504 cases, Mr. Komeiji was retained as Special Deputy Attorney General in the case of Ann Kimball Wiles, et al. v. Department of Education, et al., Civil No. 04-00442 ACK/BMK and Civil No. 05-00247 ACK/BMK (consolidated) ("Wiles-Bond case"). The Wiles-Bond case encompassed the same law and the same legal arguments as these 504 cases. When Mr. Komeiji informed our office in late July 2008 that he would be leaving his law firm to serve as general counsel for Hawaiian Telcom and would not be able to take any cases with him, we immediately sought to find an attorney to take the Wiles-Bond case to trial, which was set to begin on September 9, 2008. By P.E. Number 09-003-J, our department was granted an exemption to hire Kenneth Robbins, Esq., of Robbins & Associates. The attorneys in the Watanabe Ing law firm that were working with Mr. Komeiji on these cases and the Wiles-Bond case continued to work on all of the cases. Due to the exigent nature of the Wiles-Bond case (trial in approximately six weeks from Mr. Komeiji's announcement of his departure), we needed to find trial counsel to literally step into Mr. Komeiji's shoes.

The Judge in the Wiles-Bond case denied the State's request to continue the trial and Kenneth Robbins, Esq., as lead trial counsel and with the assistance of the attorneys at Watanabe Ing, tried the case on behalf of the State. The trial was a jury trial which last for 4½ weeks. Plaintiffs in the case were seeking damages of approximately \$9.5 million. With Mr. Robbins excellent trial skills and the diligent work of both Mr. Robbins and the Watanabe Ing law firm, the State prevailed in the trial and the Plaintiffs received \$0 in damages.

Within the less than six (6) weeks between obtaining CPO approval to hire Mr. Robbins for the Wiles-Bond case and the trial, Mr. Robbins learned and became familiar with the specific laws relating to special education and section 504 of the Rehabilitation Act. This was truly a unique situation. The attorneys from Mr. Komeiji's law firm who worked with Mr. Komeiji on the case continued to serve as co-counsel and prepare the Wiles-Bond case for trial. These attorneys worked very closely with Mr. Robbins who served as lead trial counsel. The combination of the trial team of Mr. Robbins and the Watanabe Ing attorneys resulted in the successful handling of the case.

Our Department is seeking to continue the team of counsel in these current 504 cases. We intend to have the attorneys from the Watanabe Ing law firm continue to serve as co-counsel on these three (3) 504 cases and continue to prepare the cases for trial; however, none of the attorneys is sufficiently experienced to try the case himself. The retention of Mr. Robbins to serve as lead trial counsel to work with the Watanabe Ing

attorneys is a trial team that we know can and will work effectively and efficiently together.

Mr. Robbins is a highly skilled and highly regarded trial attorney. He has an excellent working relationship with the courts and members of the bar. Mr. Robbins has an excellent trial demeanor and is highly skilled in presenting cases to a jury. In addition to his success in the Wiles-Bond case, Mr. Robbins has successfully defended clients in personal injury, legal and medical malpractice, products liability, First Amendment, federal civil rights, employment discrimination, antitrust, trust, defamation, and Americans with Disabilities Act litigation in both the state and federal courts.

These three (3) 504 cases are legally very similar to the Wiles-Bond case (i.e., parents of children who have been found eligible to receive special education and related services suing the DOE under Section 504 of the Rehabilitation Act for money damages based on allegations that the DOE failed to provide their children reasonable access to a meaningful education). The Wiles-Bond case was the first 504 case of this nature tried in the country. Mr. Robbins is currently well versed in the law in this area. Because the Wiles-Bond case was the first of this nature in the country, we are not aware of any other attorneys who have the experience that Mr. Robbins has in this area of law. And, although the facts of each of the cases may differ, the basic allegations in all of the cases (including the Wiles-Bond case) that the Plaintiffs were harmed due to the Department of Education's failure to provide reasonable access to a meaningful education make it fiscally prudent for the State to retain Mr. Robbins to represent the State in these cases. We believe it is in the best interest of the State to engage Mr. Robbins by means of a procurement exemption to serve as co-counsel and lead trial attorney for the three (3) 504 cases.