



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

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 Insurance Commissioner and the State of Hawaii ("State parties"), requires the following legal services from Wendell Fuji of Kobayashi Sugita & Goda. Mr. Fuji shall represent the State parties in the lawsuit entitled Investor Services, Inc. v. Schmidt, Civil No. 95-2513-07.

4. Name of Vendor: Kobayashi Sugita & Goda Address: 999 Bishop Street, Suite 2600, Honolulu, HI 96813	5. Price: \$280,000 per annum
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6. Term of Contract: <i>By Dec. 1,</i> From: May 7 , 2009 To: Completion	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:

Wendell Fuji of Kobayashi Sugita & Goda was selected as a Special Deputy Attorney General pursuant to section 103D-304, HRS, procurement of professional services to represent the Insurance Commissioner and the State of Hawaii (hereinafter "State parties") regarding a third-party complaint related to complex litigation that has been ongoing since 1994. Mr. Fuji was selected to be the special deputy in this matter from May 7, 2007 through May 6, 2008 (contract 55903). Via supplemental contract number 1 to contract 55903, the contract was extended from May 7, 2008 to May 6, 2009. Mr Fuji's knowledge and experience handling this complex case and the need to have no disruption to the State parties' representation makes the normal selection process impractical, ineffective, and disadvantageous.

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 Insurance Commissioner, the Department of the Attorney General, and the State of Hawaii normally follows the standard procedure for procuring special deputies per section 28-2, HRS. For the procurement of special duty services pursuant to section 103D-304, HRS, prospective special deputies are those that respond to the Attorney General's request for statements of interest in providing legal services to the State. Generally, three to five names from the list of interested attorneys will be submitted for consideration by a hiring committee designated for that purpose.
However, this is an unusual situation involving retention of an experienced attorney with a high degree of familiarity with an ongoing lawsuit. It is imperative that there be no disruption to the State parties' continued representation in the ongoing lawsuit and the complex issues involved. Therefore, use of the normal hiring committee process would impractical, ineffective, and disadvantageous.

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
Russell A. Suzuki	Sup. Dep. Attorney General	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Administration
Deborah D. Emerson	Sup. Deputy Attorney General	<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration
James F. Nagle	Deputy Attorney General	<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration
Lawrence Reifurth	Director of DCCA	<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Administration
J.P. Schmidt	Insurance Commissioner	<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Administration
		<input type="checkbox"/> Approval <input type="checkbox"/> Administration

13. Direct inquiries to:	Department: Dept of the Attorney General Contact Name: James F. Nagle, DAG Phone Number: 586-1180 Fax Number: 586-1205
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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.*

Russell A. Suzuki
 Department Head

10/9/09
 Date

Reserved for SPO Use Only

15. Date Notice Posted 10/16/09

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:

For the purposes of procurement delegation, the authorized parties have recused themselves from this matter, therefore, delegation is temporarily transferred for this specific procurement.

We understand vendor was assigned this case as a Special DepAG in 2007 for an ongoing 1994 litigation. The continued legal services of this individual are necessary to avoid disruption to the State's representation due to his knowledge and familiarity on the ongoing litigation.

16. APPROVED DISAPPROVED NO ACTION REQUIRED

Alan S. Fajal 10/26/09
 Chief Procurement Officer Date

DEPARTMENT OF THE ATTORNEY GENERAL
COMMERCE AND ECONOMIC DEVELOPMENT DIVISION

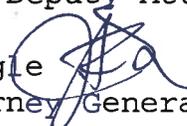
October 9, 2009

MEMORANDUM

TO: Russell A. Suzuki
Supervising Deputy Attorney General

15OCT'09 PM 5:02 SPO

THROUGH: Deborah Day Emerson 
Supervising Deputy Attorney General

FROM: James F. Nagle 
Deputy Attorney General

SUBJECT: **Insurance Division's and State of Hawaii's
Request for Special Deputy Attorney General
Services Agreement re ADM Investor Services, Inc.
v. Schmidt, Civ. No. 95-2513-07 (KSSA) and
Request for Exemption and Notice of Procurement
Violation**

Because both the Attorney General and the First Deputy Attorney General have recused themselves from this matter and because you have been assigned by them to review this matter on their behalf, I enclose for your consideration and signature forms SPO-07 (Notice of and Request for Exemption from Chapter 103D, HRS) and SPO-16 (Procurement Violation).

Both the Insurance Division and the State of Hawaii wish to have Wendell Fuji of Kobayashi Sugita and Goda continue to represent them in the above mentioned lawsuit, although they failed to timely extend the contract with Mr. Fuji. Consequently, both the Insurance Division and the State of Hawaii seek an exemption from HRS chapter 103D. Additionally, because of the failure to extend the contract and Mr. Fuji's ongoing representation, the State entities wish to report a procurement violation. The State parties seek to extend Mr. Fuji's contract from March 7, 2009 to until the litigation is completed, with payments amounting to \$280,000 per annum. Please call me at 586-1180 if you have any questions.

Enclosures