

**BOARD OF WATER SUPPLY
CITY AND COUNTY OF HONOLULU
REQUEST FOR EXEMPTION FROM
CHAPTER 103D**

DATE: September 28, 2020

TO: Ernest Y.W. Lau, P.E.
Manager and Chief Engineer

FROM: Raelynn Nakabayashi
Executive Assistant I
Executive Support Office

RE: REQUEST FOR EXEMPTION FROM CHAPTER 103D FOR A
LITIGATION ATTORNEY

Pursuant to §103D-102(b)(4)(L), Hawaii Revised Statutes (HRS) and §3-120-5, Hawaii Administrative Rules (HAR), I am recommending that an exemption be granted from the source selection process under the provisions of Chapter 103D, HRS, to select a law firm with expertise in representing governments and municipalities in complex contractual and construction litigation matters to provide litigation attorney services to represent the Board of Water Supply (BWS) in a lawsuit involving work at one of the BWS facilities.

Vendor Name & address: Kobayashi Sugita Goda LLP
999 Bishop Street, Suite 2600
Honolulu, Hawaii

Amount of the contract: Time and Materials not to exceed \$100,000

Prior exemption contract numbers: None

A. Background:

BWS has been served with a Complaint filed in the First Circuit Court, State of Hawaii (Complaint) involving a contract dispute over construction work at one of the BWS facilities and requires the services of a litigation attorney to represent the BWS in this matter.

B. Describe how procurement by competitive means is neither practicable nor advantageous to the Board of Water Supply (BWS)

On April 30, 2020, pursuant to §103D-304(b), HRS, the BWS posted its Annual Notice to Providers of Professional Services inviting professional firms to submit statements of qualification to provide services to the BWS for its anticipated professional service needs for Fiscal Year 2021 (Annual Notice). The Annual Notice stated that submittals received by June 1, 2020 would be eligible for consideration for the entire Fiscal 2021 year. Submittals received between June 2, 2020 and September 1, 2020 will be eligible for consideration beginning October 1, 2020, and submittals received between September 2, 2020 and December 1, 2020 will be eligible for consideration beginning January 1, 2021. As of September 2, 2020, the BWS has not received the minimum number of qualified submittals for Project Category 21-33ES Legal Services to be able to award a contract for legal services pursuant to §103D-304, HRS.


The Complaint may involve complex contract and construction issues and as such, the BWS requires the services of an experienced litigation attorney to assist with the matter and timely comply with the rules and filing deadlines imposed by the Hawaii Rules of Civil Procedure and the Rules of the Circuit Courts of the State of Hawaii. Given the potential complexity of the case, the knowledge and resources required, and the immediate need for services, it is not in the BWS's best interest to wait till January 2021 to see if additional submittals are received to allow selection of a firm through the professional service source selection method. Additionally, it is not practicable select a firm to represent the BWS in this matter using a competitive sealed bidding, small purchase, or competitive sealed proposal source selection method.


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

Kobayashi, Sugita & Goda LLP is very familiar with the BWS contracts and applicable General Terms and Conditions and has successfully provided these types of legal services to the BWS in the past.

Accordingly, I recommend your approval to award a contract to Kobayashi, Sugita & Goda LLP, to provide litigation attorney services and represent the Board of Water Supply in handling the Complaint. The exemption is only from applying the source selection provisions of Chapter 103D, HRS. §103D-310(c), HRS, and §3-122-12, HAR (Responsibility of Offerors) shall apply to the contract awarded. The application of this exemption will be limited to these facts and circumstances and may not be used as precedence to award any other contracts.

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


Requestor


Division Head


9/20/20
Date

9/20/20
Date

Direct Questions to: Raelynn Nakabayashi Phone: (808) 748-5177

Date of Public Notice posting: 9/28/2020 to 10/6/2020

APPROVED AS RECOMMENDED / NOT APPROVED


ERNEST Y.W. LAU, P.E.
Manager and Chief Engineer

10/7/2020
Date RN

APPROVED AS TO AVAILABILITY OF FUNDS 2021-820-3021(C21511001)
(5110.4270)


FINANCE

9/28/20
Date RN

REVIEWED AS TO PROCUREMENT FORM


PROCUREMENT OFFICE

10/6/2020
Date



**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

CERTIFICATE OF VENDOR COMPLIANCE

This document presents the compliance status of the vendor identified below on the issue date with respect to certificates required from the Hawaii Department of Taxation (DOTAX), the Internal Revenue Service, the Hawaii Department of Labor and Industrial Relations (DLIR), and the Hawaii Department of Commerce and Consumer

Vendor Name: KOBAYASHI, SUGITA & GODA

DBA/Trade Name: KOBAYASHI, SUGITA & GODA, LLP

Issue Date: 09/28/2020

Status: Compliant

Hawaii Tax#: V
New Hawaii Tax#:
FEIN/SSN#: X
UI#: X
DCCA FILE#: 7



Status of Compliance for this Vendor on issue date:

Form	Department(s)	Status
A-6	Hawaii Department of Taxation	Compliant
	Internal Revenue Service	Compliant
COGS	Hawaii Department of Commerce & Consumer Affairs	Compliant
LIR27	Hawaii Department of Labor & Industrial Relations	Compliant

Status Legend:

Status	Description
Exempt	The entity is exempt from this requirement
Compliant	The entity is compliant with this requirement or the entity is in agreement with agency and actively working towards compliance
Pending	The entity is compliant with DLIR requirement
Submitted	The entity has applied for the certificate but it is awaiting approval
Not Compliant	The entity is not in compliance with the requirement and should contact the issuing agency for more information