

NOTICE OF AMENDMENT TO EXEMPTION FROM CHAPTER
103D, HRS, CONTRACT

Attachment

5. Description of goods, services, or construction:

Contractor shall serve as special deputy attorney general to represent and defend, along with lead trial counsel Kenneth Robbins, Esq., the State of Hawaii, Department of Education (DOE) in the following cases: 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; Patricia N., et al. v. Hamamoto, et al., Civil No. 00-00252MLR/LEK (collectively "the Cases"). The Contractor shall prepare, coordinate and supervise the defense of the DOE; appear at all meetings, briefings, and hearings held in conjunction with the Cases; exercise best efforts to coordinate the defenses in the Cases to avoid duplication and share resources and work products among the three cases; to the greatest extent possible, utilize deputy attorneys general and legal assistants of the Department of the Attorney General to assist; provide reports on the progress of the litigation to the Attorney General, as requested; and provide any and all other legal or related services requested to complete all proceedings in the three cases in the USDC.

7. Reason: This / These amendment(s) are necessary because:

The State's potential exposure in these cases is in the millions of dollars per child. The DOE was initially granted summary judgment in one of the three cases. Plaintiffs appealed to the 9th Circuit Court of Appeals and the case was remanded back to the USDC. The Judge has again granted summary judgment for the State in that case, which is again on appeal to the 9th Circuit Court of Appeals. We had a firm trial date of June 2009 for one of the cases, but just prior to trial, the Judge informed the parties that he has a conflict and trial has been moved to October 2009. Costs will be incurred in preparing witnesses, again, for trial in October. In the case currently set for trial in October, Plaintiffs allege that the DOE failed to provide appropriate and necessary services to a student on Molokai. The majority of the witnesses in this case are from the outer islands. Many of the witnesses continue to reside on Molokai while some of the witnesses have moved to Maui. In addition to possible costs and expenses to prepare witnesses as the trial gets closer, there are anticipated costs and expenses to bring the witnesses to Oahu to testify. Moreover, the State has mainland experts in this case who will also have to be brought to Oahu to testify at trial. While legal arguments can be applied to each of the three cases, each of the cases has specific facts and circumstances that result in the need for individual work on each of the cases.

PE 04-23-D