

## UNIVERSITY OF HAWAII NOTICE OF EXEMPTION CHAPTER 103D, HRS

The President, University of Hawaii, is in the process of reviewing the request from  
Office of the Vice President for Academic Planning and Policy (Department/Campus)  
for exemption from Chapter 103D, HRS, for the following goods and services:

Services of education agents and/or recruiting representatives, located overseas and in the United States, to recruit international students for both credit and non-credit programs on the University of Hawaii campuses systemwide.

**Vendor:** To be determined.  
(If known)  
**Address:**

|  |              |             |                          |
|--|--------------|-------------|--------------------------|
| <b>Term of Contract:</b><br>(If known) | From: 7/1/22 | To: 6/30/25 | Cost: \$4,125,000 (Est.) |
|--|--------------|-------------|--------------------------|

|   |   |
|---|---|
| <b>Direct any inquiries to:</b><br>Department: Office of Academic Programs and Policy<br><br>Contact Name/Title: Debora Halbert, Associate VP for Academic Programs & Policy<br><br>Address: 2444 Dole Street, Bachman Hall 204<br>Honolulu, Hawaii 96822 | Phone Number:<br>(808) 956-6897<br><br>Fax Number:<br>N/A |
|---|---|

Date Posted: February 16, 2022

Submit written objections to this notice to issue an exemption from Chapter 103D, HRS, within seven (7) calendar days from the date posted to:

Office of Procurement Management  
1400 Lower Campus Road, Room 15  
Honolulu, Hawai'i 96822  
email: OPM@hawaii.edu

### REQUEST FOR EXEMPTION FROM CHAPTER 103D, HRS

TO: OFFICE OF PROCUREMENT MANAGEMENT

FROM: UH Hilo, UH Manoa, UH West Oahu and UH Community Colleges  
(Department/Program)

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Pursuant to APM Section A8.220, the Department requests a procurement exemption to purchase the following:

Description of goods, services, or construction:  
see attached

Estimated Cost: \$ see attached

(1) Explanation describing how procurement by standard competitive means is either not practicable or not advantageous to the University;  
see attached

(2) Details of the process or procedures to be followed in selecting the vendor to ensure as fair and open competition as practicable;  
see attached

(3) A description of the Department's internal controls and approval requirements for the exempted procurement; and  
see attached

(4) A list of Department personnel, by position title, who will be involved in the approval process and administration of the contract:  
see attached

Direct questions to: Jennifer Ontai Phone: 956-3351

I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TO THE BEST OF MY KNOWLEDGE, TRUE AND CORRECT.

Debora Halbert  
Full Name of Principal Investigator, Department Head, or Administrator

Debora Halbert Digitally signed by Debora Halbert  
Date: 2022.01.04 05:41:32 -10'00' 1/4/22  
Signature Date

Trisha Shibuya  
Full Name of Fiscal Administrator

Trisha Shibuya Digitally signed by Trisha Shibuya  
Date: 2022.01.06 09:04:44 -10'00' 01/06/22  
Signature Date

APPROVED:

David Lassner  
Full Name of Vice President or Chancellor

David Lassner Digitally signed by David Lassner  
Date: 2022.01.13 08:08:21 -10'00' 01/13/2022  
Signature Date

FOR OPM USE ONLY

OPM COMMENTS:

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APPROVED  DENIED

David Lassner Digitally signed by David Lassner  
Date: 2022.03.10 14:11:28 -10'00'

PRESIDENT, UNIVERSITY OF HAWAII

DATE

**ATTACHMENT TO FORM 138  
REQUEST FOR EXEMPTION FROM CHAPTER 103D, HRS**

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

The University of Hawai'i campuses enlist the services of education agents or recruiting representatives, located overseas and in the United States, to recruit international students for both credit and non-credit programs on their campuses.

Education agents whose services are enlisted are individuals, companies, or organizations that provide educational advising, support, and placement to prospective international students who are interested in studying in the United States. They function as referral agents and study abroad advisors with a focus on education. Some specialize in a certain type of program or destination, while others offer general information about study abroad opportunities throughout the world.

International, U.S. mainland, and local agents vary in terms of the type of assistance they offer to prospective international students. Their services include, but are not limited to the following: providing information about the college and its programs, advising students to ensure that the program they select is appropriate for achieving their educational goals, assisting students with the application and visa process, helping students find housing, providing information about the geographical area, assisting with transportation, and assisting in communicating with the school's offices (e.g., providing translation services). In some cases, agents actively promote the programs in targeted local student media, distribute promotional materials at student fairs and exhibitions, and/or promote programs online.

Each UH campus intends to invite interested agents to apply to be accepted into a pool of agents for a three-year period. Agents/agencies will be solicited from different countries/regions of the world.

**Estimated Cost:** Agents will be paid a commission of up to 15% of the program fee /tuition paid by each recruited student that successfully registers and enrolls in the respective programs. Commissions paid for each student shall not exceed one year (2 semesters) or shorter-term programs. The 15% is the upper limit and a campus may negotiate a lower percentage or flat rate payment, as long as the value of the commission does not exceed the 15% threshold. Funding for commission will derive from the tuition funds generated by enrolled students.

The exemption is for the period 7/1/2022 to 6/30/2025 (3 years). Year 1 is from 7/1/2022 to 6/30/2023; Year 2 is from 7/1/2023 to 6/30/2024; Year 3 is from 7/1/2024 to 6/30/2025. Unused exemption amounts from Year 1 cannot be carried forward to Year 2. Unused exemption amounts from Year 2 cannot be carried forward to Year 3.

**YEAR 1**

| <b>Campus</b> | <b>Maximum Payment Per Agent Per Year</b> | <b>Maximum Total Payments 1/</b> |
|---------------|---|----------------------------------|
| UH Mānoa      | \$180,000                                 | \$972,000                        |
| UH West O'ahu | \$25,000                                  | \$35,000                         |
| UH Hilo       | \$23,000                                  | \$23,000                         |
| UHCC          | \$50,000                                  | \$345,000                        |
| UH Total      |   | \$1,375,000                      |

**YEAR 2**

| <b>Campus</b> | <b>Maximum Payment Per Agent Per Year</b> | <b>Maximum Total Payments 1/</b> |
|---------------|---|----------------------------------|
| UH Mānoa      | \$180,000                                 | \$972,000                        |
| UH West O'ahu | \$25,000                                  | \$35,000                         |
| UH Hilo       | \$23,000                                  | \$23,000                         |
| UHCC          | \$50,000                                  | \$345,000                        |
| UH Total      |   | \$1,375,000                      |

**YEAR 3**

| <b>Campus</b> | <b>Maximum Payment Per Agent Per Year</b> | <b>Maximum Total Payments 1/</b> |
|---------------|---|----------------------------------|
| UH Mānoa      | \$180,000                                 | \$972,000                        |
| UH West O'ahu | \$25,000                                  | \$35,000                         |
| UH Hilo       | \$23,000                                  | \$23,000                         |
| UHCC          | \$50,000                                  | \$345,000                        |
| UH Total      |   | \$1,375,000                      |

Maximum total payments by campus are estimates and flexible but the UH Total is firm. The exemption is for this UH Total amount, not the specific per campus amount.

1/ Payments in excess of this amount by campus requires approval of the Chancellor and concurrence by the UH System.

**(1) Explanation describing how procurement by standard competitive means is either not practicable or not advantageous to the University.**

The procurement of services to recruit international students by standard competitive means is not practicable for the following reasons:

- a) Most potential providers of services to recruit international students are located in foreign countries and are not familiar with the University's traditional competitive bidding process. In addition to the multiple languages used by prospective service providers, the diverse geographical locations of these providers make the use of a single traditional solicitation document such as an RFP extremely difficult and challenging.

- b) Whereas traditional competitive bidding is designed to determine the most competitive price among potential service providers, a standard commission rate will be set and applied to all providers of recruiting services in accordance with standard industry practice. Although methods of determining compensation (i.e., paying commission) vary from institution to institution, a commission rate of up to 15% of the program fee is a common average for programs such as those at the UH.
- c) The selection of agents to provide international student recruiting services necessarily requires the consideration of many subjective factors such as:
1. Stability and experience of the agent (e.g., length of time in student recruitment business and overall track record);
  2. Amount of experience and success with recruiting for similar programs in the U.S.;
  3. Services provided and appropriateness of fees charged (if any) to prospective students wishing to utilize such services;
  4. Knowledge of Hawai'i and insights into marketing educational programs in Hawai'i;
  5. Familiarity with U.S. Department of Homeland Security student visa regulations;
  6. Willingness to abide by ethical standards applicable to international student recruitment;
  7. Methods used to recruit students; and
  8. Area and scope of recruitment efforts within the particular country.

**(2) Details of the process or procedures to be followed in selecting the vendor to ensure as fair and open competition as practicable:**

Each UH campus will invite qualified education agents interested in recruiting international students for their programs to submit extensive applications and required supporting documentation in a format prepared by UH and distributed by a variety of means such as website announcements, email invitations, and referrals.

Upon receipt, applications will be reviewed for completeness and references checked. The offices responsible for international marketing and recruiting on each campus will then review all application materials and select those agents expected to best represent their programs using the criteria set forth in section 1 above.

Based upon the applications received, a pool of agents determined to be the most qualified based on the criteria set forth above will be selected to recruit students from the targeted countries for a three year period.

Campuses may maintain multiple pools of qualified recruiters for the various programs and/or countries from which the campus is seeking students. The selection of an agent for a particular pool within the campus does not imply that the agent is qualified for all pools. Agents may be in more than one pool, including pools from different campuses.

**(3) A description of the campus's internal controls and approval requirements for the exempted procurement:**

There are a number of internal controls in place to ensure that the agents with whom we work with are reputable and that student needs are being successfully met.

These control procedures were created based on best practices and specific standards set by ACCJC, NAFSA, American International Recruitment Council (AIRC), Commission on English Language Program Accreditation (CEA), and National Association for College Admission Counseling (NACAC).

**Recruiting Standard 1:**

All program or language institution personnel follow ethical standards for recruiting students and promoting programs, and they ensure that the program or language institution's policies and procedures are made clear to prospective students and/or student sponsors. In any recruitment transaction, the students' interests and well-being are paramount.

**Recruiting Standard 2:**

All written, electronic, and oral information used to recruit students is accurate and complete.

**Recruiting Standard 3:**

If a program or language institution has recruiting agreements or contracts with a third party, the program or institution ensures that it has complete information about the third party, assumes responsibility for monitoring the third party, and terminates the agreement if necessary.

These standards can also be found at: <http://cea-accredit.org/about-cea/standards>.

***Application Process and Vetting of New Agents***

As described in Section (2) above, agents will undergo an application and review process in order to be accepted as an official representative of our program. This due diligence process involves: 1) verification and evaluation of all information provided on the application, 2) a background check, including three positive references from U.S.-based programs similar to ours, and 3) a signed agreement to comply with the NAFSA Code of Ethics which addresses ethical standards to guide individuals working in international education.

***Agreement and Monitoring of Compliance***

A Service Agreement articulating our respective responsibilities will be prepared when the vetting process is complete. Our Service Agreement will be reviewed and signed by the authorized representative of the recruitment agency and by the chancellor of each respective campus, and or his/her designee, and processed in compliance with all

University procurement requirements. Once the agreement is executed, it is our responsibility to provide promotional materials and program information to the agent and to communicate with the agency about our student application process, method of payment, and program policies so that representatives have accurate and complete information to use in their recruitment efforts.

To monitor the conduct of the recruiting representative, all students referred by the agent are to be surveyed or interviewed during their first term of enrollment to determine the quality and consistency of services provided by the agent. In addition, websites and other recruitment materials prepared by the agent are to be monitored for accuracy, completeness, and style of information provided.

As indicated in the agreement, the agreement can be terminated if it has been determined that the agent is no longer in compliance with the terms of the agreement. There will be no advance payments made to agents for commissions to be earned for recruited students who successfully register and enroll in University programs and no reimbursement to agents for travel and related expenses.

Each UH campus shall maintain records of students referred by each agent and any ethical concerns or incidents that arise so that an accurate and fair assessment of the agent's performance can be made at the end of the contracted period.

#### Prohibited Practice

Agents will not charge students any additional fees for services contracted and paid by the University to provide. Agents cannot charge: additional application fees, advice for applying to the institution, mailing documents (e.g., transcripts, test scores [SAT, etc.], recommendations, etc.), and fees if the student enrolls. Agents shall not ask students to pay them part of their financial aid or scholarship award. Agents can charge additional fees for English language and test prep classes, applying for student visas and travel arrangements. A fee schedule shall be provided by the agent.

#### Reports

Campus will submit reports to the Office of the Vice President for Academic Strategy:

- a) Quarterly reports, including, but not limited to: list of agents and amount paid to each agent, number of students recruited by agent, and country by agent.
- b) Annual report summarizing information (1 year), but not limited to: list of agents and amount paid to each agent, number of students recruited by agent, and country by agent.

**(4) A list of Department personnel, by position title, who will be involved in the approval process and administration of the contract:  
[Each campus will list the chancellor and position from the Business Office and responsible person for international students]**

- UH Mānoa
  - Michael Bruno, Provost
  - Alexandra French, Fiscal Administrator
  - Andy Sutton, Assistant Vice Chancellor for International and Exchange Programs (OIEP)
  - Nikki Chun, Vice Provost for Enrollment Management
  - Joel Weaver, Director for University of Hawai'i English Language Program (HELP) and Department of Second Language Studies
  - William Chismar, Dean of Outreach College
  
- UH Hilo
  - Bonnie Irwin, Chancellor
  - Carrie Masanda, Fiscal Administrator
  - Farrah-Marie Gomes, Interim Director of Admissions
  
- UH West O'ahu
  - Maenette Benham, Chancellor
  - Linda Saiki, Fiscal Administrator
  - Tim Park, Director of International Relations and Programs
  
- UH Community Colleges
  - Michael T. Unebasami, Associate Vice President for Administrative Affairs, Community Colleges
  - Deborah Nakagawa, UHCC International Education Director
  - Lisa Tsuhako, Fiscal Administrator
  
- Hawai'i Community College
  - Rachel Solemsaas, Chancellor
  - Susan Horimoto, Fiscal Administrator
  - Christine Quintana, Coordinator, International Programs
  
- Honolulu Community College
  - Karen Lee, Interim Chancellor
  - Myrna Patterson, Fiscal Administrator
  - Susan Nishida, Interim Vice Chancellor for Academic Affairs
  
- Kapi'olani Community College
  - Louise Pagotto, Chancellor
  - Justin Kashiwaeda, Fiscal Administrator
  - Joseph Overton, Honda International Center Director
  
- Kauai Community College
  - Joseph Daisy, Chancellor
  - Deanne Koshi, Fiscal Administrator
  - Kyoko Ikeda, International Education Coordinator

- Leeward Community College
  - Carlos Peñaloza, Chancellor
  - Cecilia Lucas, Fiscal Administrator
  - Aya Hara-Joesting, International Student Advisor
  
- Maui College
  - Lui Hokoana, Chancellor
  - Cindy Yamamoto, Fiscal Administrator
  - Stephanie Ohigashi, International & Regional Partnerships Coordinator
  
- Windward Community College
  - Ardis Eschenberg, Chancellor
  - Sharon Nakagawa, Fiscal Administrator
  - Charles Sasaki, Dean of Academic Affairs, Division 2
  
- UH System
  - Debora Halbert, AVP for Academic Planning & Programs
  - Blanche Fountain, Fiscal Administrator