

UNIVERSITY OF HAWAII
NOTICE OF EXEMPTION FROM STANDARD METHODS OF SOURCE SELECTION

The Vice President for Budget and Finance/Chief Financial Officer, University of Hawaii, is in the process of reviewing the request from
Information Technology Services (Department/Campus) for exemption
from Standard Methods of Source Selection for the following goods, services, or construction:

Credit Monitoring Protection Services for individuals affected by alleged data breaches involving private information occurring at the University of Hawaii at Manoa, University of Hawaii at West Oahu, Kapiolani Community College, and Honolulu Community College.

Vendor: Kroll Background America, Inc.
(If known)
Address: 100 Centerview Drive, Suite 300
Nashville, TN 37214

Term of Contract: (If known)	From: -----	To: -----	Cost: \$450,000.00 - \$575,000.00 (est.)
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Direct any inquiries to: Department: Information Technology Services Contact Name/Title: David Lassner, Vice President for Information Technology and Chief Information Officer Address: 2444 Dole Street, Honolulu, HI 96822	 Phone Number: 956-3501 Fax Number: 956-5025
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Date Posted: September 15, 2011

Submit written objections to this notice to issue an exemption from Standard Methods of Source Selection, within seven (7) calendar days from the date posted to:

Office of Procurement and Real Property Management
1400 Lower Campus Road, Room 15
Honolulu, Hawaii 96822

REQUEST FOR EXEMPTION FROM STANDARD METHODS OF SOURCE SELECTION

TO: OFFICE OF PROCUREMENT AND REAL PROPERTY MANAGEMENT

FROM: Information Technology Services

(Department/Program)

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

Description of goods, services, or construction:

Credit Monitoring Protection Services for individuals affected by alleged data breaches involving private information occurring at the University of Hawai'i at Mānoa, University of Hawai'i at West O'ahu, Kapi'olani Community College, and Honolulu Community College.

(See attached.)

Estimated Cost: \$ 450,000.00 to \$575,000.00

(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.)

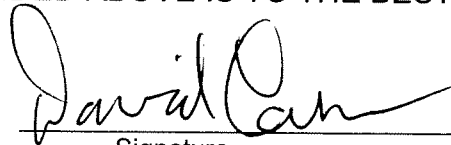
(4) A list of Department personnel, by position title, who will be involved in the approval process and administration of the contract:

(See attached.)

Direct questions to: David Lassner Phone: (808) 956-3501

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

David Lassner, Vice President for Information
Technology and Chief Information Officer


Signature

SEP 12 2011
Date

Full Name of Principal Investigator, Department
Head, or Administrator

Blanche Fountain, Director, System Administrative
Services


Signature

9/13/11
Date

Full Name of Fiscal Officer

APPROVED:

Linda K. Johnsrud, Executive Vice President for
Academic Affairs/Provost


Signature

9.13.11
Date

Full Name of Vice President or Chancellor

FOR OPRPM USE ONLY

OPRPM COMMENTS:

Recommend Approval.

☒ APPROVED ☐ DENIED



VICE PRESIDENT FOR BUDGET & FINANCE/CHIEF FINANCIAL OFFICER, UNIVERSITY OF HAWAII

9/28/11
DATE

Description of goods, services, or construction:

Procure and obtain services in support of the University of Hawai'i's efforts to implement the requirements of that certain proposed settlement agreement (which is subject to the approval of the appropriate courts) between the University of Hawai'i (University) and Philippe Gross (Plaintiff) which settles the following legal actions (the "Settlement Agreement"): (1) Gross v. University of Hawai'i, et al., Hawai'i First Circuit Court, Civil No. 11-1-1217-06 PWB and Gross v. University of Hawaii, et al., U.S.D.C. Hawaii CV-10-00684 LEK-RLP (collectively "the Litigation"). Plaintiff alleges to be a representative of groups that may have been affected by one or more alleged data breaches involving Private Information (as defined in the Settlement Agreement) occurring on the following University campuses (collectively the "Data Breaches"): (a) University of Hawai'i at Mānoa ("UHM"), (b) University of Hawai'i-West O'ahu ("UHWO"), (c) Kapi'olani Community College ("KapCC"), and (d) Honolulu Community College ("HonCC").

As part of the proposed settlement (and as described in the Settlement Agreement), the University is agreeing to provide and make available to individuals affected by the Data Breaches (collectively the "Affected Individuals") certain credit monitoring protection services (collectively the "Credit Protection Services") for a certain period of time. The Credit Protection Services consist of Data Breach Management Services to and for the Affected Individuals that includes (i) enrollment, notification, and support center access services, (ii) continuous credit monitoring services, (iii) consultation services (which includes identity theft investigation services), and (iv) identity theft restoration services (which includes issuing fraud alerts and notifying and working with law enforcement and other government entities, creditors, financial institutions, and collection agencies).

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

- (a) Selection is not at the University's sole discretion. Under the Settlement Agreement: (i) the University has the obligation to notify the Affected Individuals that the University will be providing and making available to them the Credit Protection Services and (ii) the Plaintiff has agreed that Kroll Background America, Inc. ("Kroll") may provide the required Credit Protection Services. The selection of Kroll to provide the Credit Protection Services, including the Data Breach Management Services, is and was not solely at the University's discretion.

As evidenced by the Settlement Agreement, the selection of an entity such as Kroll to provide such services is subject to the approval and agreement of the Plaintiff and the appropriate courts. Both the Plaintiff and the courts have to be satisfied that Kroll is qualified and had the ability, experience, and capability to adequately provide the Credit Protection Services required under the Settlement Agreement to the Affected Individuals. This evaluation and approval process involving the Plaintiff and the courts does not lend itself to standard University procurement procedures.

- (b) Selection qualifies as an University exempt procurement. Under the University's procurement procedures, which govern in light of the University's existing exemption from the requirements of Hawai'i Revised Statutes ("HRS") chapter 103D ("State procurement code"), and section A8.220.9 (Exempt Procurements),

subsection a.3 in particular, implementing litigation related settlement agreements qualify as an obligation that the University is required to pay by law and as an exempt procurement:

“9. Exempt procurements.

a. The following procurements are exempt from the Standard Methods of Source Selection:

- 3) Payment of obligations that the University is required to pay by law, including paying fees, permanent settlements, subsidies, or other claims, making refunds, and returning funds held by the University as trustee, custodian, or bailee.”

While the University is currently exempt from the State procurement code, section A8.220.9.a.3 of the University's procurement procedures is patterned after HRS section 103D-102(b)(2)(C):

“(b) Notwithstanding subsection (a), this chapter shall not apply to contracts by governmental bodies:

(2) To disburse funds, irrespective of their source:

- (C) To satisfy obligations that the State is required to pay by law, including paying fees, permanent settlements, subsidies, or other claims, making refunds, and returning funds held by the State as trustee, custodian, or bailee.”

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

In the process of negotiating the Settlement Agreement, various firms who might be qualified were discussed, but both the Plaintiff and the University have agreed, subject to the appropriate courts' approval, to select and retain Kroll to provide the Credit Protection Services required under the Settlement Agreement. Because of the Litigation and the need to obtain the Plaintiff's (and the courts') agreement on the identity of the firm to provide the Credit Protection Services as part of the Settlement Agreement, the process does not lend itself to the type of competitive procurement process that the University usually conducts to retain its vendors.

- (3) A description of the Department's internal controls and approval requirements for the exempted procurement.

Once the approval of the appropriate courts are obtained for the proposed Settlement Agreement, including the retention of Kroll to provide the Credit Protection Services required under the Settlement Agreement, the University will complete negotiations and finalize a services agreement with Kroll to provide the required Credit Protection Services

("Kroll Services Agreement"). The following University offices will be involved in preparing, reviewing, evaluating, and finalizing the Kroll Services Agreement:

- (a) Office of the Vice President for Information Technology/Chief Information Officer.
- (b) Office of the Vice President for Budget and Finance/Chief Financial Officer (including OPRPM).
- (c) Office of the Vice President for Community Colleges.
- (c) Office of the Vice President for Legal Affairs and University General Counsel (including the Office of Risk Management).
- (d) The Chancellors and the procurement and administrative support offices of UHM, UHWO, KapCC, and HonCC.

Thereafter, the final form of the Kroll Services Agreement will be approved by OPRPM's Director and the University's Vice President for Budget and Finance/Chief Financial Officer and signed by either of them on behalf of the University.

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

David Lassner, Vice President for Information Technology/Chief Information Officer
Howard Todo, Vice President for Budget and Finance/Chief Financial Officer
John Morton, Vice President for Community Colleges
Darolyn Lendio, Vice President for Legal Affairs and University General Counsel
Virginia Hinshaw, UHM Chancellor
Gene Awakuni, UHWO Chancellor
Leon Richards, KapCC Chancellor
Michael Rota, HonCC Chancellor
Kathleen Cutshaw, UHM Vice Chancellor for Administration, Finance & Operations
Donna Kiyosaki, UHWO Vice Chancellor for Administration
Milton Higa, KapCC Vice Chancellor for Administrative Services
Kenneth Kato, HonCC Vice Chancellor for Administrative Services
Michael Unebasami, Associate Vice President for Community Colleges
Paul Kobayashi, Director, Office of Financial Management and Comptroller
Blanche Fountain, System Administrative Services Director