

# James Madison University

## Procedures for Procurement of Goods and Services

All procedures as set forth shall be governed by the following University Policies:

- #4201, Procurement of Goods, Supplies and Services. <http://www.jmu.edu/JMUpolicy/policies/4201.shtml>
- #4100, Signature Authority on Contracts <http://www.jmu.edu/JMUpolicy/policies/4100.shtml>

**Use of contracts:** The use of JMU Contracts is preferred. The use of cooperative contracts issued by other VASCUPP/VHEPC member institutions is also preferred. The use of state contracts issued by DPS is preferred. Cooperative contracts issued by other public or private organizations or entities, including other educational institutions, public-private partnerships, public bodies, charitable organizations, health care provider alliances and purchasing organizations are allowed only when those contracts are procured competitively with comparable processes as noted below or with appropriate documentation and approval from the Director of Procurement. Cooperative contracts must be reviewed and approved by JMU Procurement Services prior to use in order to ensure they were procured under appropriate and comparable processes or have appropriate approval.

**Purchases \$10K and Below:** Individual purchases of goods and services costing \$10,000.00 or under and in the aggregate regularly do not accumulate to over \$200,000 in total annual cost may be procured through the procurement delegation granted to individual university departments. Procurement Services will establish contract options for campus goods and services as appropriate to ensure standardization and cost savings. In consideration of practices supplied in EO 35 campus buyers are advised to source micro certified businesses for single purchases not already covered by a Term Contract or Exclusion to Competition when 10k or under in cost. Campus buyers are also encouraged to utilize SWaM certified vendors, eVA Registered vendors and established contracts for their purchases whenever possible. Detailed procedures for purchases in this category can be found in the University Financial Procedures, Section 7005. <http://www.jmu.edu/finprocedures/7000/7005.shtml>

**Purchases Over \$200K:** Individual purchases of goods and services costing over \$200,000 shall follow the procedures as set forth in the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors. <https://vascupp.org/hem.pdf>

**Purchases between \$10,000.01 and \$200K:** The *Rules Governing Procurement of Goods, Services, Insurance and Construction by a Public Institution of Higher Education of the Commonwealth of Virginia (Subchapter 3 of the Restructured Higher Education Financial and Administrative Operations Act)* and 2019 and subsequent 2020 Budget Amendment 4-9.03#1c permits a public body to establish small purchase procedures, if adopted in writing, not requiring the use of competitive sealed bidding or competitive negotiation for single purchases of goods and services or the establishment of a term contract if the sum of all phases is not expected to exceed \$200,000; however, such small purchase procedures must provide for competition when practical.

The following small purchase procedures have been established by James Madison University when acquiring materials, supplies, and equipment, professional or nonprofessional services up to and including \$200,000. Procurements made pursuant to these procedures do not require public bid openings or newspaper advertising of competitively negotiated procurements.

### **Over 10k - 200k Methods of Procurement**

#### **Unsealed IFB**

An unsealed Invitation for Bid may be used to solicit bids or quotes for goods and nonprofessional services from \$10,000 up to and including \$200,000.

Bids may be opened and reviewed upon receipt. Bid tabulation is still required. All responses must be received at the designated location by the date and hour stated in the solicitation.

VBO advertising of unsealed IFBs are required to be posted on the VBO.

### **Unsealed RFP**

An unsealed Request for Proposal may be used to solicit proposals for goods and nonprofessional services from \$10,000 up to and including \$200,000.00.

Offers may be opened and evaluated upon receipt. All responses must be received at the designated location by the date and hour stated in the solicitation.

In lieu of an evaluation committee, the buyer or end user may solely evaluate and rank offers. Upon completion of the evaluation, negotiations shall be conducted with the offeror(s) selected.

VBO advertising unsealed RFPs are required to be posted on the VBO.

**Sole Source Procurement:** A sole source procurement is authorized when there is only one source practicably available for the goods or services required. Competition is not available in a sole source situation; thus distinguishing it from a proprietary purchase where the product required is manufactured by only one company, but is sold through distributors and competition between them can be obtained. Sole source justification based solely on a single vendor's capability to deliver in the least amount of time is not appropriate since availability alone is not a valid basis for determining a sole source procurement.

Written Determination. A written determination documenting that there is only one source practicably available for that, which is to be procured, must be included in the procurement file. The writing shall document the basis for the determination. Public posting is not required.

Negotiating a Contract. After the sole source has been documented, a contract may be negotiated and awarded without competition. In making sole source procurement, it is the buyer's responsibility to negotiate a contract that is in the best interest of the University. The buyer should carefully research the product or services and determine in writing what is a fair and reasonable price. Negotiations can be conducted on adding terms and conditions favorable to the University and deleting or changing terms that are one-sided in favor of the contractor. It is important to know the market and the contractor's situation in regard to the market. In noncompetitive negotiations - one must be exceptionally well prepared and negotiate to the extent that is practicable.

Documentation. The sole source documentation must contain the following information:

- Explain why this is the only product or service that can meet the needs of the purchasing agency.
- Explain why this vendor is the only practicably available source from which to obtain this product or service.
- Explain why the price is considered reasonable.
- Describe the efforts that were made to conduct a non-competitive negotiation to get the best possible price for the taxpayers.

Approval and Reporting. Sole source procurements \$30,000 and below must be approved by a Commodity Team Manager, those over \$30,000 must be approved by the Director, University Purchasing or designee.

A "Perpetual Sole Source" is a special type of Sole Source created in specific areas, typically certain types of licenses and library related publishers of journals/subscriptions where the Buyer has strong evidence that the specific provider will remain a Sole Source indefinitely and there is little chance the market will change. The Perpetual Sole Source is initially established in the same manner as a "Sole Source", with the same justification, approval and posting requirements. "Perpetual Sole Sources" must be reviewed by the Buyer for subsequent new spot purchases or at the point a new contract/agreement is signed to ensure continued validity. The actual "Perpetual Sole Source" justification will have a maximum life of 10 years before a new Sole Source needs to be submitted for approval and posting. A contract based off a Perpetual Sole Source may last for whatever term is negotiated by the Buyer; a new Perpetual Sole Source would only need to be created at the point both the "Perpetual Sole Source" had reached the end of life *and* the contract reached final expiration.

*VBO* advertising will occur on all Sole Sources over 10k when awarded. Perpetual Sole Sources will be posted only once at initial award. Subsequent purchase orders will be entered into eVA as appropriate per our exemption list, until the Perpetual Sole Source justification reaches its maximum date and any established contract/agreement has reached its expiration; whichever is longer.

### **Emergency Procurement Procedures**

An emergency is an occurrence of a serious and urgent nature that demands immediate action. Emergency procedures may be utilized only to purchase that which is necessary to cover the emergency. Subsequent requirements shall be obtained using normal purchasing procedures. The potential loss of funds at the end of a fiscal year is not considered to be an emergency.

The nature of the emergency determines what pre-award action may be taken:

For an emergency purchase required to protect personal safety or property, efforts should be directed to finding a source and authorizing the contractor to proceed. This does not relieve the university from negotiating a fair and reasonable price and subsequently documenting the procurement action taken.

For other types of emergencies, competition should be sought to the extent practicable. Verification of the vendor's: 1) qualifications 2) insurance coverage, if applicable, 3) warranty, and 4) any other data pertinent to the procurement may be obtained.

As soon as practicable, after directing the contractor to proceed, a confirming purchase order should be prepared. Care should be taken to include in detail any agreement, including price, made orally with the contractor.

Prepare a written determination for signature by the Purchasing Director or designated representative indicating the nature of the emergency, the reason for selection of the particular contractor and include such determination with the file.

Issue confirming purchase order.

*VBO* advertising will occur on all Emergency Procurements over 10k.

### **Level III Informal Unsealed Best Value Quotes**

The University may obtain required goods or nonprofessional services that will result in a “spot purchase” or single purchase order through a Level III Informal, Unsealed Best Value process under 200k.

The preference is to include a minimum of four (4) DSBSD-certified SWaM business sources. If it is not practicable to include only DSBSD-certified SWaM sources then include a minimum of four (4) providers to include two (2) DSBSD-certified SWaM business sources, if available. If fewer than the required number of sources are included or if DSBSD-certified SWaM business are not available, the reasons must be documented in writing and placed with the file.

A full written determination/justification for use of this procedure up to 200k is not required; however, manager approval (email, etc) is necessary up to 30k. Director approval is needed for procurements expected to be over 30k. Approvals are needed since competition is limited to those directly contacted.

The total award cannot exceed 200k.

A pre-quote meeting or site visit may be held if necessary.

Evaluation Criteria. Criteria shall be stated in any request to the providers contacted.

General and Special Terms & Conditions. Add General and Special Terms and Conditions to the documentation or incorporate them by reference to apply to the subsequent purchase.

Pricing Schedule/Scenario. Include how prices are to be submitted. If lump sum pricing is not advantageous, use a pricing scenario to obtain prices for unknown quantities or hours. The pricing schedule should be tied to deliverables and must coincide with the method of payment stipulated in the request.

Attachments. An attachment such as a Contractor Data Sheet may be used as needed.

VBO advertising is not required up to \$200,000 as this is specifically a Level III small purchase procedure option; however, the purchase order issued as a result of this type of procurement will be entered into eVA in advance of any work commencing. The buyer must allow for at least one (1) day for response by the contacted providers. A reasonable amount of time should be allowed for vendors to respond based on the nature of the procurement.

Receipt. Responses may be received by Phone, Fax, electronically (email, etc), hand-delivery or mail as allowed by the Buyer. Responses may be received until the time identified by the Buyer in the request conversation/documentation. Responses/quotes may be opened and evaluated upon receipt. In lieu of an evaluation committee, the buyer or end user may solely evaluate and rank offers.

Award. The award will be made to the provider, conforming to the request, that is the most advantageous and represents the best value to the University, all costs and other factors considered.

Documentation: All responses collected will be kept with the file. If information is collected over the phone the Buyer will document for the file.

VBO advertising is not necessary for this under \$200,000 informal process; however, entering the Purchase Order into eVA for transparency is required, unless otherwise excluded.

**Buyer Determination to not pursue competition in the best interest of the University:** For purchases of goods and services not costing more than \$30,000 in total, the University's central procurement office buyers may, at their discretion and with approval the Commodity Team Manager, place an order with a suggested source without seeking further competition. Determination to not pursue competition for goods and services over \$30,000 but not greater than \$200,000 may only be approved by the Director of Procurement or her designee or the Associate Vice President of Business Services or her designee. A written justification will be maintained with the procurement records explaining why it was in the best interest of the University to not pursue competition. SWaM Certification may be a contributing factor for not pursuing additional competition. If purchase is not with a certified SWaM vendor, justification must include documentation as to why a certified SWaM vendor was not practical.

SWaM / eVA Self Registered Purchases \$50,000 or Less: While the official Departmental Delegation is \$10,000.00, departments may receive one quote/proposal from a Micro-small, Small, Woman-owned, or Minority-owned business (certified by the Virginia Department of Small Business and Supplier Diversity) that is also an eVA Self-Registered Vendor up to and including \$50,000. The department will process the requisition in eVA (***prior to notification of award to the vendor***), including with the submission any quote/proposal received. Procurement Services will then verify the vendor is ***currently certified*** with VDSBSD and is a ***currently active*** eVA Self-Registered vendor. If both criteria are met, Procurement Services will approve the order without the need to seek further competition. If both criteria are not met, Procurement Services will follow internal normal procedures (*including any of the above Small Purchasing Procedures*).

#### **Exceptions to Normal Competitive Requirements Under 200K**

Competition normally is either not practicable or available for purchase of the following goods or services up to and including \$200,000. The Procurement Services Buyer is responsible for determining if the purchase meets the exemption criteria. Use of exemptions listing for individual purchases under 200k unless otherwise restricted.

- Fees associated with participation in (*non-intercollegiate*) athletic games, tournaments, and events including team travel, lodging, registration fees, and game guarantees. (*Club events, etc*)
- Referees, officials, and umpires for athletic events
- Televised or radio programs (*e.g., athletic events, televised conferences, etc.*) whereby specific stations are selected because of market demographics
- Artists (*does not include graphic artists*), writers, designers (*e.g. set designers, musical design/composition, sound design artists*), choreographers, photographers (*other than graduation and yearbook*) and videographers.
- Rental fees for exhibitions of historical artifacts or original works of arts. (*The rental fee may include charges other than the rental of the exhibition, such as transportation costs*)
- Print or electronic books and subscriptions, printed materials, reprints, film rentals, videocassettes, DVD, slide presentations, online streaming, etc., when only available from the producer or protected distributors
- Conference hosting services, to include: associated lodging & catering, audio visual support, and other conference related expenses which costs are offset by vendor sponsorships and / or conference attendee registration fees
- Conference attendance, to include: conference registration, course fee, seminars fee, training fee, and tuition
- Academic and Research consulting services
- Contributions / donations / sponsorship made by a university (*subventions/subsidy of scholar's publication*).
- Honoraria
- Maintenance contracts for high-cost, sophisticated equipment where there is no known competitor and service must be purchased from the manufacturer of the equipment (*i.e. void warranty*)
- Transplants, related transplant services, and implants
- Services provided by public and private hospitals, medical practices, medical clinics, and individuals that are licensed and authorized by law to engage in the prevention, diagnosis, or treatment of human illness, injury, physical disability, mental health, special needs, substance abuse, or emotional condition
- Specialized software licenses and applications, websites, browser plugins, subscriptions, electronic databases, software-as-a-service (SAAS) where competition does not appear practicable or is in the best interest of the university, and maintenance or upgrades of existing software already purchased. \*Buyers will first make an attempt to locate an existing cooperative term contract and use as appropriate. The buyer will always consider year over year costs in consideration for use of this exemption (using a typical five-year contract term as a basis). Unless for pure maintenance of an existing system, if costs would be higher than 200k using the five-year model to guide them, the buyer should utilize the Sole Source method of procurement, if applicable, solicit appropriately, or seek Director approval to consider only the yearly spend or actual lessor term of agreement.
- Pass through procurements (*examples include contracting for alumni functions for which the institution is reimbursed by the alumni and materials purchases for students by a faculty member using state funds and for which the students fully reimburse the institution*)
- Academic testing and evaluation services
- Accreditation fees

- Equipment testing or evaluation (*limited to purchases of quantities considered necessary for complete and adequate testing*)
- Training sessions, instructional services, and workshops
- All travel, domestic and foreign, for individuals or groups to include: air, lodging, ground transportation, meals, and special services (*e.g., currency exchange services*)
- Advertisements in newspapers, magazines, journals, radio, television, social media, digital platforms, etc.
- Facilitators and Mediators
- Real estate leases
- Utilities – electricity, natural gas, water, etc.
- Court Reporters
- Moving and Relocation
- Original works of art; and original, or authentic antique period art frames (*does not include newly created replacement or reproduction frames*).
- Rare and historic manuscript, printed and photographic materials (*books, ephemera, maps, manuscripts, photographs and prints*) that are one of a kind or exist in a very limited supply.
- Pharmacies participating in pharmacy student in-service programs wherein all qualifying facilities are eligible.
- Purchases of used equipment. This also includes used equipment purchased at a public or online auction, if determined in writing that the purchase would be in the best interest of the public.
- Surplus property.
- Purchases made by a university employee or agent while located in another country and the required goods/services are purchased from a vendor located in that country and the purchased goods/services will be used in the country where they are purchased.

#### No Dollar Limit Exemptions

- Purchases from Governmental Sources (*Federal, States and their agencies, public bodies*)
- The purchase of goods or services that are produced or performed by or related to:
  - Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired;
  - Nonprofit sheltered workshops or other nonprofit organizations that offer transitional or supported employment services serving the handicapped;
  - Private educational institutions; or
  - Other public educational institutions.

- Speakers and performing artists;
- Memberships and Association dues;
- Sponsored research grant sub-awards and contract sub-awards (sub-recipients), not to include the purchase of goods or services by the Institution;
- Group travel in foreign countries;
- Conference facilities and services;
- Participation in intercollegiate athletic tournaments and events including team travel and lodging, registration and tournament fees;
- Royalties; or
- The purchase of legal services, provided that the Office of the Attorney General has been consulted, or expert witnesses or other services associated with litigation or regulatory proceedings.

**Price - Reasonableness Determinations**

When competition is restricted or lacking or the prices offered appear excessive, the procuring agent is responsible for further analysis to determine in writing if the prices are fair and reasonable. This applies to sole source, single response, contract changes/modifications, contract extensions, and contract renewals.