

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 state contracts issued by DPS is preferred. The use of cooperative contracts issued by other VASCUPP institutions is also 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. All 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.

Purchases \$10K and Below: Individual purchases of goods and services costing \$10,000.00 or under and in the aggregate 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 wherever practical.

The following small purchase procedures have been established by James Madison University when acquiring materials, supplies, and equipment, printing 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.

Competitive Requirements:

Unsealed Bidding

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

For unsealed bidding under 200k the preference is to solicit with a minimum of four (4) DSBSD-certified SWaM business sources. If it is not practicable to solicit only with DSBSD-certified SWaM sources then solicit a minimum of four (4) bidders to include two (2) DSBSD-certified SWaM business sources, if available. If fewer than the required

number of sources are solicited or if DSBSD-certified SWaM business are not available, the reasons must be documented in writing and placed with the file.

VBO advertising is not required under \$200,000.

Unsealed Proposals

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.

For unsealed proposals under 200k the preference is to solicit with a minimum of four (4) DSBSD-certified SWaM business sources. If it is not practicable to solicit only with DSBSD-certified SWaM business sources then solicit a minimum of four appropriate sources to include two (2) DSBSD-certified SWaM business sources, if available. If fewer than the required number of sources are solicited or if DSBSD-certified SWaM business are not available, the reasons must be documented in writing and placed with the file.

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 is not required under \$200,000.

Unsealed Best Value Acquisition

The University may obtain required goods or nonprofessional services using best value concepts. A written determination for the use of competitive negotiation is not required for unsealed Best Value Acquisition.

Procurement Planning. A purpose statement must include that the solicitation is using best value procurement procedures. Describe Statement of Needs in general terms. Mandatory requirements are stated. Include Subjective/Objective evaluation criteria. If making multiple awards, the total sum of all awards shall not exceed \$200,000.

Pre-proposal Conference/Site Visit. A pre-proposal conference or a site visit may be held if necessary. Seek information from vendors concerning criteria.

Evaluation Criteria. Criteria shall be stated in the solicitation. Unless otherwise stated, each criterion will be of the same importance. If criteria are not of the same importance, then include a statement at the end of the paragraph such as: Criteria are listed in the order of importance. Examples of criteria may be Technical Approach, Qualifications of Personnel, Resource Commitment, Past Performance, Risk and Incentives.

General and Special Terms & Conditions. Add General and Special Terms and Conditions to the solicitation or incorporate them by reference. The Announcement of Award clause must be included in the solicitation.

Select Rating and Scoring Method. Listed below are methods that can be used to score and evaluate proposals. Any method is acceptable.

- 1) Adjectival
- 2) Color
- 3) Numerical

Pricing Schedule/Scenario. Include how proposal 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 solicitation.

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

For unsealed best value acquisitions under 200k the preference is to solicit with a minimum of four (4) DSBSD-certified SWaM business sources. If it is not practicable to solicit only with DSBSD-certified SWaM business sources then include a minimum of four contractors to include a minimum of two (2) DSBSD-certified SWaM business sources, if available. If fewer than the required number of sources are solicited or if DSBSD-certified SWaM business are not available, the reasons shall be documented. VBO advertising on eVA is not required up to \$200,000. The solicitation shall be open for the period of time stated in the solicitation but must be open for at least one (1) day. A reasonable amount of time should be allowed for vendors to respond based on the nature of the procurement.

Receipt. Unsealed Best Value proposals may be received by FaxBack, electronically, hand-delivery or mail. Receive proposals until the due date and time specified in the solicitation. Proposals may be opened and evaluated upon receipt. In lieu of an evaluation committee, the buyer or end user may solely evaluate and rank offers.

Evaluation and Negotiation. Use a Go/No-Go approach and eliminate those proposals that do not meet mandatory requirements. Evaluate vendor performance to determine responsibility. Check debarment records on the DPS eVA web-site, www.eva.virginia.gov. Evaluation criteria, other than price, are evaluated first. After rating the technical proposals, pricing is then considered. Consider the overall benefits and costs to the agency. Points to be negotiated may be selected. Negotiations may be conducted with the offeror(s) deemed to be fully qualified and offering the best value proposal(s). Document results of any negotiations in the procurement file.

Award. The award will be made to the responsible Offeror(s) whose proposal, conforming to the solicitation, is the most advantageous and represents the Best Value to the University, costs and other factors considered. Prepare a written justification and place in contract file.

VBO advertising is not required under \$200,000.

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.

VBO advertising will occur on all Sole Sources over 50k.

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 is not *required* under \$200,000.

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 \$30,000 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 \$30,000. 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 100K

Competition normally is either not practicable or available for purchase of the following goods or services up to and including \$100,000. The Procurement Services Buyer is responsible for determining if the purchase meets the exemption criteria. Use of exemptions listing for individual purchases over 100k, but less than 200k must be authorized by Director of Procurement.

- 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 under 100k 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 100k 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.
- 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.