Buying @ W&M

Procedures for Procurement of Goods and Services
Including Small Purchases

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), hereafter referred to as “Governing Rules” permit 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 $50,000; however, such small purchase procedures must provide for competition wherever practical.

A user-friendly procure-to-pay matrix including exceptions and special conditions for departments may be accessed at https://procuretopay.wm.edu/ and is incorporated by reference as a part of W&M procedures.

All purchases of goods and services expected to exceed $50,000 shall follow the procedures as set forth herein.

The College of William and Mary “William & Mary”, or “W&M”, which includes Virginia Institute of Marine Science, “VIMS” Procurement Services Office is the central contracting office for the university for non-capital outlay goods and services. All such purchases made by any university department shall be made in accordance with the Governing Rules, the Commonwealth of Virginia Purchasing Manual for Institutions of Higher Education and their Vendors, https://vascupp.org/hem.pdf, and such rules and regulations as W&M may prescribe. Contracts may only be signed by employees with delegated purchase and contract authority in accordance with their level of delegation. While grant purchases are required to adhere to university procurement policy, grant related transactions shall be coordinated through the Office of Sponsored Programs.

William & Mary shall not issue payment of any invoice for any department covering the purchase of goods and services, when such purchases are in violation of law. Contracts awarded in violation of the law/Governing Rules, are voidable. Contracts signed by individuals without authority to do so are void from the beginning. Individuals signing/awarding contracts without the authority to do so may be held personally liable for payment to the vendor.
In accordance with the Governing Rules and the Commonwealth of Virginia Purchasing Manual for Higher Education Institutions and their Vendors, William & Mary has adopted the following procedures for purchases not expected to exceed $50,000.

These procedures include:

I. Preferred Contract Use
II. Mandatory Requirements
III. SWaM Purchases under $50,000
IV. Professional Service Purchases under $50,000
V. Purchases Under $5,000
VI. Purchases between $5,000 - $50,000
VII. Methods of Procurement
VIII. Exempt from Competition

I. **Preferred Contract Use:**

The use of state contracts issued by Department of General Services, Division of Purchases and Supply (DPS) and cooperative contracts issued by Virginia Association of State College and University Procurement Professionals (VASCUPP) institutions are preferred contracting instruments. 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. § 6. *Cooperative procurement (Governing Rules).*

II. **Mandatory Requirements:**

**VCE Requirement:** § 53.1-47. Code of Virginia requires furniture to be purchased from Virginia Correctional Enterprises (VCE). W&M will obtain quotes from VCE for furniture purchases in excess of $50,000 unless VCE does not manufacture the goods (or equivalent) required, or grants a release for the purchase.

To purchase non-VCE furniture over $50,000, W&M will solicit a written release from VCE. VCE shall be afforded up to 48 hours to respond to a request for a release of furniture not expected to exceed $50,000. If no response is provided, W&M procurement services may elect to source furniture from other suppliers.

William & Mary may establish category specific contracts and established University Mandatory Contracts as out lined in the procure-to-pay matrix.
III. **SWaM Purchases under $50,000:**

W&M’s annual plan encourages purchases from Small, Woman-Owned, and Minority-Owned businesses (SWaM). If prices quoted from a SWaM supplier do not appear to be fair and reasonable, or if a SWaM quote is unachievable or does not result in a good business decision for the university, W&M should document the procurement file to that effect, including stating the basis for the determination.

IV. **Professional Services Purchases under $50,000:**

Professional Services are defined as: accounting, actuarial services, architecture, land surveying, landscape architecture, dentistry, medicine, optometry, pharmacy, professional engineering, economist services, and law. Professional Services when procured are exempt from competition when purchases in the aggregate do not exceed $50,000. Any purchase of legal services must have prior approval from University Counsel.

V. **Purchases Under $5,000:**

Individual purchases of goods and services costing under $5,000 and in the aggregate do not accumulate to over $50,000 in total annual cost shall be procured through the delegation granted to individual university departments. However, order-splitting* must be avoided. Where possible, requirements should be combined when practical to obtain quantity discounts and other administrative efficiencies. In some instances, even though the annual amount is less than $50,000, it may be advantageous to enter into a term contract and this should also be considered.

Purchases **under $5,000** that are allowable per William & Mary's Small Purchase Charge Card (SPCC) Policies and Procedures should be placed on the SPCC. Check payments will only be processed for items that are not allowable per SPCC policy, identified as an allowable direct pay or reimbursement and in cases where vendors do not accept the SPCC or apply a surcharge to SPCC purchases.

*Order Splitting Prohibition. The placement of multiple orders within other than a reasonable time period to one or more vendors for the same, like, or related goods or services to avoid using the appropriate method of procurement or to remain within delegated purchasing authority is prohibited and may be considered a violation; order splitting results in higher administrative cost and inefficiencies to W&M.

VI. ** Purchases between $5,000 and $50,000:**

The following small purchase procedures have been established by William & Mary when acquiring goods or nonprofessional services up to and including $50,000. Procurements made pursuant to these procedures do not require public bid openings, newspaper advertising of competitively negotiated procurements, nor formal posting of any manner.
VII. **Methods of Procurement and Related Requirements under $50,000:**

Methods of Procurement may include:

a) Unsealed “Request for Quotes” (also known as unsealed bidding)

b) Unsealed Proposals, through Request for Proposals

c) SWaM Award

d) Sole Source

e) Emergency

f) Reverse Auction

g) Public Auction

Methods of Procurement:

a) **Request for Quotes:** A request for quotes may be used to solicit bids or quotes for goods and nonprofessional services from $5,000 up to and including $50,000. W&M will solicit a minimum of three (3) bidders. William & Mary will make every effort to solicit VA SBSD registered small businesses, if available. If fewer than the required number of sources are solicited, the reasons should be documented. VBO advertising is not required under $50,000.

b) **Unsealed Proposals:** An Unsealed Request for Proposal method may be used to solicit proposals for goods and nonprofessional services from $5,000 up to and including $50,000. W&M will solicit a minimum of three (3) suppliers. William & Mary will make every effort to solicit VA SBSD registered small businesses, if available. If fewer than the required number of sources are solicited, the reasons should be documented. VBO advertising is not required under $50,000.

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. Best Value method may be utilized for evaluation. Upon completion of the evaluation, negotiations shall be conducted with the offeror(s) selected.

c) **SWaM Award:** A SWaM award procurement is authorized when the quote received is a Virginia registered SBSD certified SWaM business and the price is determined fair and reasonable by the end user and verified by Procurement Services. Approval of the Director of Procurement or Associate Director is necessary to place an order with a suggested source without seeking further competition.

d) **Sole Source Procurement:** A sole source procurement is authorized when there is only one source practicably available for the goods or services required. *(Governing Rules §5.E)* 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. The following elements are required to execute a sole source procurement:

i. 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 under $50,000.

ii. Negotiate a Contract: After the sole source has been documented, a contract may be negotiated and awarded without competition.

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

A. Describe the product(s) or service(s) being requested and how same will be used, specify users or target group for requested product(s) or service(s), and benefit to William & Mary.

B. Identify other products, services, and associated vendors that were also considered to provide the requested products or services and why those vendors were not selected.

C. Explain why the requested products and services are the only products or services that can and will meet all of the necessary requirements of the University.

D. Explain why this vendor is the only practicable available source from which to obtain the requested products or services.

E. Please provide a list of peer Universities that are currently using the requested products or services that were also provided by the requested vendor, if known.

iv. Approval and Reporting: Sole source procurements exceeding $5,000 must be approved by William & Mary’s Director of Procurement Services. Those in excess of $500,000 must be approved by the Chief Financial Officer.

e) Emergency Procurement Procedures: An emergency is an occurrence of a serious and urgent nature that demands immediate action. (Governing Rules §5.F) 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, to include 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.

Prepare a written determination for signature by the Director of Procurement Services or designated representative indicating the nature of the emergency, the reason for selection of the particular contractor and include such determination with the file. Emergency procurements exceeding $10,000 must be approved by William & Mary’s Director of Procurement Services. Public posting is not required below $50,000.

   f) Reverse Auction: The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning (Governing Rules §5.J)

   g) Public Auction: Upon a determination made in advance by the Institution and set forth in writing that the purchase of goods, products, or commodities from a public auction sale is in the best interest of the public; such items may be purchased at the auction, including online public auctions. (Governing Rules §5.I)

VIII. Exceptions to Requirements:

The procure-to-pay matrix (https://procuretopay.wm.edu/) outlines exceptions to competition and where appropriate exceptions to eVA.

Buyer Determination to not pursue competition in the best interest of the university: For purchases of goods and services not expected to exceed $10,000, the College’s procurement services procurement officers may, in their discretion and with approval of the Director of Procurement Services or Associate Director of Operations, place an order with a suggested source without seeking further competition.
Determination to not pursue competition for goods and services over $10,000 but not greater than $50,000 and not qualified as a sole source may only be approved by the Director of Procurement Services, or the Chief Financial Officer. 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.

**Price - Reasonableness Determinations:** When competition is restricted or lacking or the prices offered appear excessive, procurement services 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.