Executive Order 35

Frequently Asked Questions – Draft for Radford University

General

Summary

As a result of Executive Order 35, departments are advised to source items through contracted or certified micro-small vendors first. If neither are available then other SWaM vendors should be sourced (small, women-owned, minority-owned, or service disabled veteran owned business). If no certified SWaM business is available, move forward with sourcing from other non-certified firms. We recommend you document your files with your previous efforts.

Question: Why are we doing this?

Answer: Executive Order 35 was released on July 3, 2019. Radford University is working to develop policies and procedures that support the requirements of the Executive Order implemented at the legislative level.

The Governor feels it is imperative to maximize the participation of small (including women-, minority-, and service disabled veteran) businesses in state work. Doing more business with small businesses is a catalyst for economic growth. It also serves to maximize participation of a diverse group of vendors, including women and minority owned businesses that have in the past been underrepresented in contractual work.

Question: Do I really have to pay attention to this?

Answer: Yes, those that make decisions about purchases, approve purchases, and make the actual purchase must follow university and Commonwealth of Virginia Procurement policies and procedures. Not doing so can jeopardize your own department’s delegated purchasing authority as well as the university’s overall delegation.

Question: Wasn’t there an Executive Order related to set asides for certified businesses before? We didn’t do it then, why is this one different?

Answer: Yes, each of the last four Governors have had some type of Executive Order related to doing business with Small, Woman and Minority Owned businesses. Radford University worked to implement many of the items in those Executive Orders as well, in good faith, to support the effort. However, with our statutory delegation related to Level II we, along with other delegated institutions, chose not to implement set asides in any fashion, and instead encouraged campus departments to seek out SWaM businesses when the opportunity was right.

In this new Executive Order, Higher Education Institutions with statutory authority, such as Radford, are included and the Secretary of Education’s office as well as our own Administration was involved prior to it being released. We have worked on our policies and procedures to support Executive Order 35.
**Question:** We have Level II Delegation. Doesn’t that allow us to set our own policies?

**Answer:** Level II does provide us with a great amount of autonomy, and unlike other state agencies, without autonomy, Radford University is able to set our own policies to support the Executive Order rather than follow very prescriptive state rules; however, we can’t ignore it entirely.

Level II is allowing us to implement small dollar purchasing procedures for purchases under $100,000 so your purchases will process faster through eVA. It also provides Procurement & Contracts additional flexibility for certain types and thresholds of purchases, and in the near future you’ll be learning about additional things we’re implementing to make your purchasing a little easier.

**Question:** What are the university’s goals related to these types of businesses?

**Answer:** The university’s SWaM goals for FY2020 discretionary expenditures are 1% Micro, 10% Minority, 2% Women, 16% Small, 1% Service Disabled Veteran, 1% Employment Service Organizations, 1% Federal 8A Small business, 1% Federal EDWOSB Woman owned business, 1% Federal FSDV Service Disabled Veteran owned business.

Our overall goal for FY2020 is 34%. The Commonwealth’s aspirational goal for all public entities is 42% and 50% for capital construction.

Aspirational goals in each category are based on our knowledge of contracts in place, procurements that have opportunity for SWaM businesses, and the actual availability of certified vendors in each certification category related.

Our discretionary expenditures for FY19 totaled $47,346,210 for SWaM reporting purposes. It took $473,462 of expenditures with SWaM businesses to achieve just 1%.

In FY19 we exceeded our goals for the Small and Women-Owned categories which helped us to meet our total goal, but we fell short in the minority and other categories as well as the Commonwealths aspirational goal.

**Question:** What companies are considered Micro Small, Small, Women, Minority or Service Disabled Veteran Owned?

**Answer:** Firms must be certified with the Virginia Department of Small Business and Supplier Diversity (SBSD) in order to be considered as a SWaM firm in the Commonwealth for procurement practices and to be counted towards our goals in reporting.

For more information on the different certification types please go to the following link: [https://www.sbsd.virginia.gov/certification-division/swam/](https://www.sbsd.virginia.gov/certification-division/swam/)

**Question:** Does this apply to every department on campus?

**Answer:** Yes, all E&G, Auxiliary, Capital, Local Funds and Sponsored Program orgs are impacted.
**Question:** What steps should I take to source appropriate vendors?

**Answer:**

#1 – Your first step should always be to source through a Radford University approved Term Contract. Our Radford University Term Contracts and other Radford University Procurement & Contracts approved Term Contracts (State Contracts, VASCUPP Contracts, etc.) have already been solicited using the appropriate procurement processes. When one uses an existing approved Term Contract there is nothing else to do. Examples of existing Term Contracts: TSRC, Bright Ideas, Grainger, VWR, CDWG, Dell, Apple, etc.

#2 – If no Term Contract is available for your purchase, you should work to source a Micro-Small business. (See Appendix A & B for finding Micro Small Certified businesses on both the SBSD website and eVA.) You should also contact Procurement for assistance in finding these vendors.

#3 – If no Micro-Small certified business is available, work to source with a certified Small, Women, or Minority, or Service Disabled Veteran Owned business.

#4 – If no certified SWaM business is available, move forward with sourcing from other non-certified or majority firms. We recommend you document your files with your previous efforts.

**Question:** What are the easiest methods to deal with this new initiative?

**Answer:** Use existing Radford University approved Term Contracts for your purchases.

**Question:** What documentation should I include in my files if I don’t use a Certified Micro-Small Business?

**Answer:** You should work to document your file with any efforts you made to utilize a certified Micro-Small business and with any pricing, responses or non-responses you received from those firms.

**Question:** Why should I keep documentation about my efforts to use Certified Micro-Small Businesses?

**Answer:** It is possible that firms could FOIA us for information to determine whether or not we attempted to utilize a certified SWaM. In addition, auditors can always request to see documentation to determine if we are following policies and procedures. It’s best to be able to show you made a good faith effort to utilize a SWaM firm.

**Question:** What kind of information do I need in my file documentation if I don’t use a certified Micro-Small business for my purchase?

**Answer:** If you utilize an approved Term Contract, no additional documentation is necessary; these have already been publicly solicited with appropriate processes. If you are not using an approved Term Contract you should document your file with the efforts you took to locate a certified SWaM vendor.

As an example, you may include a memo to your file listing the steps you took to find a Micro-Small business:

“On August 1st I searched the eVA Vendor Listing and the SBSD search form for vendors with the Micro status that appeared to offer similar services to what I needed. After contacting XYZ vendor, I found they did not offer that service. I was unable to locate another certified Micro-Small business. I therefore moved forward with ABC company.”
“I reached out to XYZ company a certified micro-small business and ABC company a non-certified business for a quote. XYZ company’s price was $125 whereas ABC company’s price was $100. The non-certified business also offered free shipping and had the item in stock. I ordered from the non-certified firm.

**Question:** What are the requirements I need to know about for orders over $5,000 that will flow to Procurement & Contracts?

**Answer:** Procurement & Contracts also has procedures to follow to ensure we are working to award spot purchases and Term Contracts to eligible/capable SWaM firms. Depending on the commodity and availability of SWaM firms and the dollar value, we may solicit specifically with certified SWaM businesses. We will encourage and consider SWaM sub-contracting plans provided by firms. Procurement & Contracts Buyers will advise you of the Procurement Method and the specific requirements we have as we work with you on the purchase.

**Question:** This seems like it will take more time, what is Procurement & Contracts offering to try to help speed up other Procurements so I may have more time for these items?

**Answer:** While your departmental delegation is $5,000.00, if you chose to utilize an eVA self-registered vendor that is also SWaM certified (in any category) up to $100,000.00, Procurement & Contracts will verify those two requirements and confirm price-reasonableness, and allow the purchase to move forward without additional processes. The order must be submitted and approved prior to the commencement of any work. Orders cannot be submitted after the fact nor can orders be split to stay under this dollar amount. The ability to do this is also related to our Level II Delegation. In the case of a certified contract vendor vs awarding to a certified non-contract vendor, the contract vendor should always have preference unless there is a justifiable reason not to award to that vendor such as financial considerations.

**Question:** How do I find certified SWaM vendors to use?

**Answer:** Certified businesses can be found on SBSD’s website under the Small Business & Supplier Diversity SWaM and DBE Directory (firms on this site are all certified as SWaM firms, but may not always be eVA self-registered firms) or by searching on eVA’s Vendor Directory. See Appendix A and B for further detailed information.

In addition, you may always contact the Procurement & Contracts Buyer for the commodity you are purchasing to seek assistance.

**Question:** What if the Certified Micro Small Business is more expensive than a non-certified firm?

**Answer:** The Executive Order allows for a Micro-Small firm to be more expensive than a non-certified firm as long as the certified firm does not exceed 5% of the lowest non-certified firms cost. If cost is your only factor, such as a bid process, we should still consider award to the certified firm.

**Question:** How can I help this initiative when I talk to businesses we want to work with?

**Answer:** Yes, please help! We know that there are many, many more small, women and minority businesses doing business in the Commonwealth of Virginia and most, but not all, other state’s business
also have eligibility to certify in the Commonwealth. However, many chose not to attempt certification. You are the person that is typically talking directly to these businesses. We need you to always encourage the businesses you’re working with to attempt certification with the Commonwealth of Virginia. You should let them know it may impact your ability to continue to do business with them. Expanding the pool of available certified businesses helps not only Radford, but everyone across the Commonwealth, in our purchasing efforts. Specifically the Small business criteria is fairly lenient and many businesses can meet that definition.

Certification is free to the vendor and lasts for five (5) years! There are benefits as well. Those certified as a SWAM business have the opportunity to benefit on orders up to $100,000.00. In addition, Procurement & Contracts has other policies related to certified Small businesses. For example, all RFP’s issued include points for SWaM certification or certified SWaM business sub-contracting plans and can be considered as part of the evaluation process. There is also a reduction in eVA fees charged to a SWaM vendor.

**Question: Is there a chance that this could change again?**

**Answer:** Yes, as with anything there is potential for change. As part of Executive Order 35 the Governor made a requirement for a Disparity Study to be completed to determine if there was disparity in awards to minority and women owned businesses in the Commonwealth. If the study reflects disparity, the Governor could choose to issue a new Executive Order establishing guidance specific to those types of businesses. A future Governor could always issue a completely different Executive Order on this topic. The legislature has for the last few years had bills related to Supplier Diversity and specifically the certification criteria, and we expect more legislative bills to be presented this year. New legislation can also impact our processes.

Radford is committed to supporting the Small, Women-Owned and Minority business initiatives and by implanting best practices in this area, we will meet or exceed the requirements of this executive order.

**Question: Is the only impact on purchase over $5,000?**

**Answer:** No, there are additional things within the Executive Order that Procurement & Contracts needs to consider for purchases from $5,000-$100,000 and specifically for A/E Professional Services and Capital Construction. Procurement & Contracts will work through those items on each procurement and advise the department’s we’re working with when there are things related to small businesses that need to be considered.

(Continued)
Useful Links

Virginia Department of Small Business and Supplier Diversity (SBSD)
https://www.sbsd.virginia.gov/

Virginia Association of State College & University Purchasing Professionals (VASCUPP)
https://vascupp.org/

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SWaM Vendor Categories

- MB/HBCU  Minority Business Enterprise/Historically Black College & University
- WB       Women-owned Business Enterprise
- Micro    Small business with 25 or few employees and gross receipts under $3M
- SDV      Service Disabled Veteran-owned Enterprise
- ESO      Employment Services Organization (Goodwill Industries, New River Community Services)
- 8A       Federal small business certification to be recognized by VA DSBSD
- EDWOSB   Federal woman-owned business certification to be recognized by VA DSBSD
- FSDV     Federal Veteran-owned business certification to be recognized by VA DSBSD
**Appendix A**

Searching for a certified Micro, Small, Women-, Minority-, Service Disabled Veteran Owned business on the Virginia Department of Small Business and Supplier Diversity (SBSD) **directory**:

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<th>1MB Consulting LLC</th>
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Search by Certification Type and other factors as needed to narrow your search. Use keywords or NIGP codes to find firms that offer the particular good or service.

Search results will appear with firms that match the criteria requested.
Appendix B

Searching for a Micro, Small, Women-, Minority-, Service Disabled Veteran business on eVA’s Vendor Listing:

On the top left corner of the eVA Vendor List one can click in the button to either search by Vendor Name or by SWaM Type. If by SWaM Type one can scroll through the list and then click on the appropriate type (for example, O – Micro). NOTE: in the SBSD Directory Micro is referred to as Micro, on the eVA Vendor List you will see it reflected as “O”.

These are some of the returned certified Micro Small vendors that are listed in eVA; there are thousands of them so all cannot be returned in the search:

If we search instead by Vendor Name using something we think might be in their name like “photos” we see there are two firms that do photography that are Micro Certified: