



# NORTHERN NEW MEXICO COLLEGE

## Procurement Guide

**Administered by:**

The NNMC Procurement Office

*In coordination with*

The NNMC Administration and Finance Office, and the NNMC Grants Office

Revised 5.29.18

**Purpose:** The purpose of this guide is to provide guidance on topics related to the procurement policies of Northern New Mexico College. The manual is reviewed annually and revised as needed to clarify these policies.

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# NNMC Procurement Policy & Procedures

## Introduction

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Northern New Mexico College's (NNMC) Procurement Office was established as the central purchasing office<sup>1</sup> of the college to ensure requirements of the New Mexico Statute 1978, Chapter 13.1.1 to 13.199 (New Mexico Procurement Code). At a Special Meeting of the NNMC Board of Regents on May 29, 2018 the Board of Regents (BOR) passed a resolution for NNMC to follow not only the New Mexico Procurement Code, but also any appertaining regulations and future amendments to either the statute or regulations.

This manual provides guidance to NNMC's departments in adhering to both the Code and the appertaining regulations. The Procurement Office, in coordination with the Office of Administration and Finance, and the NNMC Grants Office is responsible for educating and guiding all departments of the college in adherence to proper procurement procedures per this policy.

As a public institution, all monies received by a department of NNMC, regardless of their source, are considered to be NNMC funds and are to be expended under the procedures set forth herein. In order to ensure compliance with all applicable Federal and State laws, all purchases of supplies, materials, equipment, and services for the college shall be made through the Procurement Office, unless otherwise stated in these procedures.

When a procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations including the Uniform Guidance 2 CFR 200. When mandatory applicable federal law or regulations are inconsistent with the provisions of the New Mexico Procurement Code, compliance with federal law or regulations shall be compliant with the Procurement Code (NM Stat § 13-1-30B).

The Procurement Office has the sole authority for ordering supplies, materials, equipment, personal or professional services, leases, rental and construction for the college and its departments. Purchases made without proper approval may become the personal obligation of the person originating such a purchase.

**Important:** Per NM Stat § 13-1-199, any business or person that willfully violates the Procurement Code is guilty of:

- a) a misdemeanor if the transaction involves fifty thousand dollars (\$50,000 or less); or
- b) a fourth degree felony if the transaction involves more than fifty thousand (\$50,000);
- c) Additional penalties may be applicable for procurement using Federal funding under the False Claims Act 31 US Code § 3729-3733.

Clarification regarding subawards made under federal grant awards: Subawards made by the college may be called subcontracts, sub-agreements, sub-grants, etc., and they may also have the appearance of procurement agreements in format and language, however, they forms of 'financial assistance' and do not constitute what 2 CFR 200.317-326 describes as a 'procurement action.' Because of this, their issuance is not subject to the procurement standards specified in this policy, except those specific to 2 CFR 200.213 Suspension and Debarment.

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<sup>1</sup> Per NMAC 1.4.1.8 B. Central Purchasing Offices

## Contracting Authority

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Only the NNMC Board of Regents, the President, the Vice President of Administration and Finance/CFO, the Vice President of Academic Affairs/Provost, and the Chief Procurement Officer and his/her designees may sign a contract that legally binds NNMC.

## Conflict of Interest

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Per NM Stat § 21.1.35 Sales by boards, officers or employees prohibited; parties to contracts receiving commission or profit; penalty:

"Sales by boards, officers, or employees prohibited; parties to contracts receiving commission or profit; penalty. No board of regents of a state educational institution, no member of a board and no school official or teacher, either directly or indirectly, shall sell to any state educational institution that he is connected with by reason of being a member of a board of regents of a state educational institution or to any school official or teacher, any school books, school furniture, equipment, apparatus or any other kind of school supplies, sell property insurance or life insurance to any employee of that state educational institution or do any work under contract, nor shall any such board or members thereof or school officers or teachers receive any commission or profit on account thereof, and all such persons are prohibited from being parties directly or indirectly to any such contract or transaction; provided that the provisions of this section shall not apply to contracts entered into pursuant to the provisions of the University Research Park Act [NM Stat § 21.28.1 1978] or that comply with provisions of the Governmental Conduct Act [NM Stat § 10.16.1 1978] and the Procurement code [NM Stat § 13.1.28 1978]. Any person violating the provisions of this section shall be fined not exceeding one thousand dollars (\$1,000) or imprisoned not exceeding one year in the penitentiary of New Mexico or be fined and imprisoned as set forth in this section in the discretion of the court."

Pursuant to NM Stat § 13.1.190, except as permitted by the University Research Park Act (NM Stat § 21.28.20), it is unlawful for any State Agency or local public body employee to participate directly or indirectly in a procurement when the employee knows that the employee or any member of the employee's immediate family has a financial interest in the business seeking or obtaining a contract. NM Stat § 13.1.62 defines "immediate family" as a spouse, children, parents, brothers and sisters.

This policy is in direct alignment with Uniform Guidance 2 CFR 200.112 which requires that disclosure be made in writing of any potential conflict of interest to the Federal awarding agency or pass-through entity in accordance with applicable Federal awarding agency policy.

## Gifts and Gratuities

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No employee of NNMC, in particular those engaged in procurement functions, shall accept favors, gifts, or gratuities, either directly or indirectly from any vendor, representative, or business firm.

## Suspension and Debarment

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Under NM Stat § 13.1.177-178, the Chief Procurement Officer (CPO) may suspend a person<sup>2</sup> from consideration for award of contracts if the office finds that a person has engaged in conduct that constitutes cause for debarment.

For procurements utilizing federal funds, restrictions may apply to awards, subawards, and contracts with entities that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities (2 CFR 200.212). Additionally, per 2 CFR 200.318(h), the college is responsible for providing due diligence in ensuring that only responsible contractors are engaged to provide goods or services. The Grants Office will verify eligibility of vendors, contractors, and other parties for procurements involving Federal funds for contracts via the System for Award Management (SAM) site ([www.sam.gov](http://www.sam.gov)).

## Payment for Purchases

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Under NM Stat § 13.1.158, state entities are not allowed to issue payment in advance of delivery of goods and services. It is the expectation of the college that vendors invoice for goods and services as they are delivered. Unless specifically excluded within this policy, no warrant, check, or other negotiable instrument shall be issued in payment for any purchase of services, construction, or item of tangible personal property unless the services, construction, or items of tangible personal property have been received and meet specifications. In order to make any payments NNMC requires all vendors submit a W-9 to establish a new vendor or to update an existing vendor.

NNMC's payment terms for purchase order transactions are Net 30 days from date of invoice. However, when permissible, terms that offer discounts for prompt payment, such as 2% 10, Net 30 days; or terms that have been agreed to by the vendor and Purchasing, shall be utilized.

Prepayment is a request for payment before goods / services have been received. Prepayment should only be made when prepayment is the normal form of payment (i.e. memberships, subscriptions). Per NM Stat § 13.1.98(J) minor purchases not exceeding five thousand dollars (\$5000) consisting of magazine subscriptions, conference registration fees, and other similar purchases where prepayments are required are exempted from the procurement code.

## Tax Exemption

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NNMC is an agency of the State of New Mexico and is exempt from all applicable Federal and most State taxes. New Mexico Gross Receipts Tax (NMGRT) should be paid for services, software, and construction projects only.

Departments or contractors may request a New Mexico Non-Taxable Transaction Certificate (NTTC) by notifying the Procurement Office and providing a valid New Mexico Combined Report System (CRS) number or IRS issued Employer Identification Number (EIN) and a complete corporate mailing address.

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<sup>2</sup> "Person" is defined as "bidder", "offeror" and "contractor" including principals, officers, directors, owners, partners and managers.

## Purchase Requisitions

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Purchase requisitions are required regardless of the dollar amount for ordering supplies, materials, equipment, personal or professional services, leases, rental and construction for the college and its departments. Purchase requisitions require all signatures within the chain of command of the requestor, including budgetary review, and approvals from either/or/both the Vice President of Administration and Finance (CFO) and the Vice President of Academic Affairs (Provost) before obligations of funding. If the procurement utilizes Federal funding it must also be approved by the Federal Grant Compliance Officer/Grants Manager.

Purchase requisition should include justification that supports the allowability, allocability and reasonableness of the expenditure. Most importantly, the justification should support the need of the expenditure and negate any possible findings (including unallowable costs, or questionable costs) in the annual single audit and/or Federal, State, or other sponsoring agency's audit.

Purchases may not be artificially divided (split) to avoid competitive requirements. Orders placed in such a manner may be determined to be the responsibility of the requester and will be considered a misdemeanor or 4th degree felony depending on the amount, for willfully breaking the procurement code. Please reference NM Stat § 13.1.125(D) and 13.1.199.

## Unallowable Purchases

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As a public institution of higher education, funded in part by State allocations and student tuition, NNMC is held to a high standard of accountability for its procurement practices. All college expenditures should clearly and directly support the College's mission to ensure student success by providing access to affordable, community-based learning opportunities that meet the educational, cultural, and economic needs of the region.

When requested expenditures are questionable, either by the State Procurement Code or by the Federal Uniform Guidance, advance confirmation of allowability must be made by the NNMC Office of Administration and/or by the NNMC Grants Office as applicable to the funding source for the expenditure.

Examples of unallowable expenditures, include, but are not limited to: items for personal use; alcoholic beverages; items whose costs include a taxable donation (i.e. meals at fundraising events, table sponsorships, etc.); fines and penalties incurred by an employee; gift cards; expenses directly related to lobbying or the endorsement of any political candidate; and items procured in a manner not consistent with NNMC's procurement policy.

## Procurement Card

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Purchases using the P-Card shall follow policies and procedures as established and maintained by Purchasing and approved by the Regents, President, and Vice President, Administration and Finance. It is important to note that the Business Office defines use of Procurement Cards (P-Cards) as a method of payment not a method of procurement. Designated users of P-Cards must do due diligence in obtaining the 'best obtainable price.' Documentation of 'best obtainable price' should be submitted with a purchase requisition prior to encumbering funds, following Purchase Requisition guidelines above.

If purchases are made on the P-Card, outside of the Purchase Requisition process, or if unallowable costs have been charged to the card, NNMCM Business Office shall require a refund from the vendor or reimbursement by the cardholder and the incident shall be tracked as a cardholder violation.

## Inspection of Items Received by Shipping and Receiving

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It is the responsibility of NNMCM Shipping and Receiving to inspect all orders received and either accept or reject the order immediately when it arrives. Late inspection and notification of damaged items or incomplete receipts may prevent a claim for replacement or relief from payment for the items. The shipments will be checked for condition and compliance with the quantity. If the shipment received is not as ordered, the supplier must be notified immediately and requested to replace or correct the deficiency. The following procedures should be followed:

1. Inspect all boxes and containers for visible damage immediately upon receipt.
2. If container is damaged, write "container damage" on the delivery person's log sheet before signing for the receipt.
3. Open and inspect the contents immediately for damage. If any items are damaged, notify the supplier immediately. Be sure to retain the damaged container and all packing materials for claims inspection; if a shipping carton is received in good physical condition, and there is "hidden damage" to the contents, call the supplier immediately.
4. In the case of damaged shipments, be certain to keep the shipping carton for claims processing.
5. Please notify the appropriate department of damaged upon receipt, including efforts taken to replace the damaged goods.

If the order has been satisfactorily received, Shipping and Receiving will send the purchase order, a copy of the packing slip or partial receipt (if applicable), to the Accounts Payable office within ten (10) days of receipt. Packing slips must be signed and dated and indicate what has been received.

NOTE: Purchase Orders for services will not be received by NNMCM Shipping and Receiving.

## Procurement Thresholds

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Under NM Stat § 13.1.125(C), a single purchase involving an expenditure less than \$20,000 for services, construction or items of tangible personal property, may be procured by issuing a direct purchase order to a vendor at the "best obtainable price." The requestor must provide a written quote or proof of cost with the purchase requisition.

For purchases between \$20,000, but less than \$60,000 departments should provide the Procurement Office with three (3) written, responsible quotes/bids in order to determine 'best price.' The only exception to this is when a State price agreement is available for the preferred vendor.

A single purchase of services, construction, items of tangible personal property, or professional services in an amount equal to or greater than \$60,000 shall be made only through either the Request for Proposal (RFP) process, the Sole-Source determination process, or Emergency Procurement process as dictated by the Procurement Code. (Guidelines are provided separately in this manual.)

Separate purchases of the same or similar materials or services from the same supplier at the same time or about the

same time shall be considered a single purchase. Furthermore, purchases shall not be artificially divided to avoid competitive requirements under NM Stat § 13.1.125, and if split may become the responsibility of the requester.

NOTE: Federally funded procurements may have additional restrictions under the Federal Acquisition Regulation (FAR) and Uniform Guidance 2 CFR 200 and must go through the Grants Office for approval prior to obligating funds.

## Contractual Agreements

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All licensing, rental, maintenance, service, and lease agreements requiring NNMC approval are not legally binding until signed by the Board of Regents, the President, the Vice President of Administration and Finance, CPO and/or their designees as indicated herein. Regardless of the dollar amount, NNMC faculty and staff are prohibited from signing documents committing NNMC.

Multi-term contracts for items of tangible personal property or services may be executed for any period of time deemed to be in the best interests of NNMC, not to exceed four (4) years, provided that the term of the contract and conditions of renewal or extension, if any, are included in the specifications; that funds are available for the first fiscal period at the time of contracting; and that any services are in accordance with New Mexico procurement code and regulations. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds. Under certain circumstances, a multi-term agreement may be issued for a maximum of eight (8) years.

## Disposition of Property

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The NNMC Business Office is solely responsible for the disposing of all NNMC property, except property to be used by the Procurement Office as a trade-in or exchange, and IT equipment which must be processed through the IT Office. The disposition of equipment or other capital expenditures purchased with Federal funds must be approved by the NNMC Federal Grant Compliance Officer/Grants Manager per guidelines provided in 2 CFR 200.313 and 200.439.

## Construction

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All construction projects shall conform to the requirements of NM Stat § Chapter 13, Public Purchases and Property: Article 4, Public Works Contracts except for federally funded construction projects exempt under NM Stat § 13.4.3.

When equipment or service procurements require installation and the combined cost exceeds \$60,000, the Procurement Office will request wage rates from the New Mexico Department of Workforce Solutions by Purchasing. When Federal funds are used for construction over \$2,500, Davis-Bacon wage rates apply.

Subject to the CPO determination and in consultation with NNMC Facilities & Services, projects under \$20,000 shall require one written quote, and projects between \$20,000.00 to \$60,000 require three (3) written quotes from licensed contractors. Renovation projects over \$60,000.00 and new construction projects will require sealed bids via the RFP process. Requests for planning and design of these projects should be made through Facilities.

Contractors awarded a Purchase Order must have appropriate licensure for the type of work to be performed at the time they submit their bid. Prior to the start of a project, contractors may be required to provide a Certificate of Insurance, a Performance Bond, and a Labor and Material Payment Bond as specified in the RFP.

## Unauthorized Purchases

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Any person, firm or corporation that willfully violates any provisions of the Procurement Code is subject to the penalties outlined in N.M.S.A. 13-1-196 through 13-1-199, in addition to any disciplinary action taken by the college up to, and including, termination of employment.

Procurements not properly authorized in advance by the Procurement Office shall require a written statement of justification by the person originating the purchase, detailing events that led to the unauthorized purchase, along with a statement of actions being taken to prevent repetition of future unauthorized purchases. The statement will require the review and approval by the Vice President of Administration and Finance and the statement must be included in the procurement file.

On a case-by-case basis, NNMC reserves the right to reject or make payment, in total or any portion thereof, as it deems appropriate. Any unauthorized purchase or portion thereof, rejected for payment by the college will be the personal responsibility of the individual causing such unauthorized purchase.

## Amending Purchase Orders

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Purchase Orders may be amended when changing quantity, price, description of line items, changes to fund, or addition/deletion of line items. Change Orders (CO) can only be initiated with a written request to the Procurement Office detailing the change needed and the reason for the change. All changes will be processed into BANNER by the Procurement Office. Changes in POs in excess of a 5% increase over original cost must re-approved by the appropriate change of command.

## Emergency Purchases

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Per the NM Stat § 13.1.127, an emergency condition is a situation that creates a threat to public health; welfare, safety, or property such as may arise by reason of floods, epidemics, riots, equipment failures or similar events. The existence of the emergency condition creates an immediate and serious need for services, construction, or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten the functioning of government, the preservation/protection of property, or the health/safety of any person. Poor planning does not constitute an emergency.

Upon identification of an emergency, an immediate written notification should be sent to the CPO and/or the NNMC Procurement Office as they are the only entities authorized to make procurements when an emergency condition arises. The CPO is required to provide a written determination of the basis for the emergency procurement; this determination and the selection of the particular contractor shall be included in the procurement file. The CPO may issue a purchase order after the fact if the vendor is amendable to the request. The CPO shall also put all information relating to the emergency procurement on the NM General Services purchasing website within three (3) business days of award. Emergency Procurements records must include: 1) the contractor's name; 2) the amount and terms of the contract; 3) the list of services, construction, or items of tangible personal property procured under the contract; 4) purchase order if applicable; 5) and, the justification for the procurement method.

## Procurement of Used Items

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Per NM Stat § 13.1.155, when procuring used items with an estimated cost of five thousand dollars (\$5,000) or more, the procurement shall be treated as if procuring new items. The equipment purchased must have a minimum 90-day warranty and independent certification of working order.

## Sole-Source Purchases

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Upon determination by the CPO, a sole-source procurement may be awarded for services, construction, items of tangible personal property or professional services under \$20,000 without competitive sealed bids or competitive sealed proposals, if the provider is the sole source of the goods and/or services being requested and the cost is determined to be reasonable.

Such determinations must be posted to the New Mexico General Services Department purchasing site at [www.generalservices.state.nm.us/statepurchasing/SoleSourceSubmit](http://www.generalservices.state.nm.us/statepurchasing/SoleSourceSubmit) for the mandatory thirty (30) day period prior to issuing the purchase order. Postings to this site automatically post to the New Mexico Sunshine Portal. If the sole source is challenged and found to have merit, competition shall be made by obtaining three (3) quotes for procurements between \$20,000 and \$60,000, and for procurements exceeding \$60,000 by competitive sealed bid or proposal, after the mandatory thirty (30) day period. Purchasing shall conduct negotiations, as appropriate, as to price, delivery and quantity in order to obtain the price most advantageous to NNMC.

For Federally funded sole-source procurements, additional justification for sole source determinations may be required, including prior authorizations, price/cost analysis, and negotiated profit. The NNMC Grants Manager will provide guidance per any special conditions of the award and any applicable Uniform Guidance requirements.

Subawards proposed to and approved by external funding agencies and administered by NNMC's Grants Office are not considered procurements and shall be processed independently through that office and in accordance with NNMC policy. Sole Source documentation is not required but the Procurement Office will be responsible for processing purchase requisitions and issue purchase orders for subawards.

## Professional Service Contracts

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Per NM Stat § 13.1.117.1, professional services agreements are required for services performed by an individual, such as a medical provider, or other licensed professional such as an attorney, psychologists, certified public accountants, researchers, architects, engineers, etc. NNMC utilizes a service contract form for this purpose. If the person is performing in the capacity of a temporary employee, the transaction should be processed through the NNMC's Human Resource Office. Services contracts require both a purchase requisition and the service contract with the contractor's signature, a detailed scope of work, and a W-9 if the contract is a new vendor with the college. All payments for services must be supported by a detailed contractor invoice.

## Procurement Files

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Procurement Office files are the official files for all procurement transactions. All actions authorized by NNMC according to the Procurement Code and applicable Federal Uniform Guidance requirements shall be fully documented

and maintained in secure files for a period outlined in NM Stat § 1.21.2 and the Federal 2 CFR 200.333. Before disposal, the Business Office will make a determination if the files should be retained beyond these guidelines or disposed, as well as determine what methods of disposal are required.

## Regent's Notification and Approval Requirements

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Federal funds: Procurements utilizing federal funds exceeding \$100,000 require Regent's notification by formal correspondence through the Purchasing Services Office or designated satellite office.

State funds: Procurements utilizing state funds exceeding \$250,000 require Regent's approval by formal correspondence through the Purchasing Services Office prior to the issuance of a purchase order.

## References & Links

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### **State Procurement Links**

NM Procurement Code: [https://law.justia.com/codes/new-mexico/2006/nmrc/jd\\_ch13art1-755d.html](https://law.justia.com/codes/new-mexico/2006/nmrc/jd_ch13art1-755d.html)

NM Procurement Code Regulations:

<https://www.generalservices.state.nm.us/uploads/files/SPD/Presentations/1%204%201%20NMAC.pdf>

NM General Services Sole-Source and Emergency Procurement Listings:

[https://www.generalservices.state.nm.us/statepurchasing/sole\\_source\\_emergency\\_view.aspx](https://www.generalservices.state.nm.us/statepurchasing/sole_source_emergency_view.aspx)

NM General Services Debarment Notices:

[https://www.generalservices.state.nm.us/statepurchasing/Debarment\\_Notices.aspx](https://www.generalservices.state.nm.us/statepurchasing/Debarment_Notices.aspx)

NM General Services Statewide Price Agreements:

[https://www.generalservices.state.nm.us/statepurchasing/Statewide\\_Price\\_Agreements.aspx](https://www.generalservices.state.nm.us/statepurchasing/Statewide_Price_Agreements.aspx)

New Mexico Sunshine Portal, Sole-Source/Emergency Procurement: <http://sunshineportalnm.com/ssep.aspx>

### **Federal Procurement Links**

Federal Uniform Guidance: <https://www.gpo.gov/fdsys/granule/CFR-2017-title2-vol1/CFR-2017-title2-vol1-part200>

Federal System for Award Management (SAM): <https://sam.gov/portal/SAM/##11#1>

Federal Acquisition Regulation (FAR): <https://www.acquisition.gov/browsefar>