

TITLE 4 CULTURAL RESOURCES
CHAPTER 12 COMMUNITY ART RESOURCES
PART 11 ART IN PUBLIC PLACES PROGRAM

4.12.11.1 ISSUING AGENCY: Department of Cultural Affairs, New Mexico Arts (NMA) Division, Art in Public Places Program.

[4.12.11.1 NMAC - Rp, 4.12.11.1 NMAC, 9-30-2009; A, 01-01-2019]

4.12.11.2 SCOPE: All state departments and agencies, boards, councils, institutions, commissions and quasi-corporations, including all state educational institutions enumerated in Article 12. Section 11 of the constitution of New Mexico, and all statutorily created post-secondary educational institutions.

[4.12.11.2 NMAC - Rp, 4.12.11.2 NMAC, 9-30-2009]

4.12.11.3 STATUTORY AUTHORITY: Sections 9-4A-6, 13-4A-10, and 18-5-7 NMSA 1978.

[4.12.11.3 NMAC - Rp, 4.12.11.3 NMAC, 9-30-2009]

4.12.11.4 DURATION: Permanent.

[4.12.11.4 NMAC - Rp, 4.12.11.4 NMAC, 9-30-2009]

4.12.11.5 EFFECTIVE DATE: September 30, 2009 unless a later date is cited at the end of a section.

[4.12.11.5 NMAC - Rp, 4.12.11.5 NMAC, 9-30-2009]

4.12.11.6 OBJECTIVE: The objective of this part is to interpret, implement and enforce the provisions of the Art in Public Places (AIPP) Act, Section 13-4A-1 to 13-4A-11 NMSA 1978.

[4.12.11.6 NMAC - Rp, 4.12.11.6 NMAC, 9-30-2009]

4.12.11.7 DEFINITIONS: As used in this rule, in addition to those defined at 4.12.1.7 NMAC the following definitions apply.

A. “AIPP funds” means the funds allocated for the acquisition and installation of art from appropriations for new construction or renovations, as described in the arts in public places act, and is comprised of site-specific funds, see Section 13-4A-4(A) NMSA 1978, and auxiliary funds, see section 13-4A-4(B) NMSA 1978.

B. “AIPP program” means the arts in public places program of NMA that administers all aspects of the arts in public places program and the public art selection process.

C. “AIPP staff” means the project coordinator or contractor with the AIPP program who is assigned to facilitate the public art selection process.

D. “Art selection committee” means the committee that selects the artwork and the artist for a commission or purchase project. See Subsections (M), (T), and (X) of 4.12.11.7 NMAC for the different types of art selection committees.

E. “Art selection process” means the open and fair process of selecting artwork for placement in public buildings/property. The art selection process requires that representatives of the local community or region participate in the selection of the artist or artwork as members of a selection committee.

F. “Artist submission” means a high-quality example of artistic work and supporting documentation that fulfills the submission requirements stated in the prospectus.

G. “Auxiliary Funds” means the AIPP funds allocated pursuant to Subsection B of Section 13-4A-4 NMSA 1978 for new construction or renovation of structures which are excluded from the provisions of the Art in Public Places Act under Subsection E of Section 13-4A-3 NMSA 1978. “Auxiliary Funds” may be expended on the acquisition and installation of art for existing public buildings as well as for administrative costs incurred by NMA for the implementation for the Art in Public Places Act.

H. “Building” means a relatively permanent structure or facility which includes fixtures and other built-ins and that is used for any of a wide variety of activities, including but not limited to plazas, parks and arenas.

I. “Commission” or “commission project” means the process of selecting a work of art to be designed and created for a specific building or site.

J. “Construct” means to make or form a building or make major renovations to a building and may include the cost of commissioning a building for energy efficient green building standards (i.e. LEED certification), as required by law; used interchangeably with “build”.

- K.** “**Deaccession**” means the act of permanently removing an artwork from the state’s public art collection.
- L.** “**Finalist**” means the individuals or artist teams selected from all artist submissions by the LSC to present maquettes, drawings, and other material for consideration as the selected artist for a commission project.
- M.** “**Local selection committee or LSC**” means the committee of five to eleven members excluding AIPP staff, that selects a site, develops a prospectus, and select an artist for the site.
- N.** “**Maquette**” means a finalist’s scale model of the proposed artwork or other appropriate means of expressing the artist’s idea.
- O.** “**New Mexico artist**” means an artist who resides in New Mexico. If an artist resides in New Mexico for only part of the year, to qualify as a New Mexican artist, the artist must reside in New Mexico for at least ninety days out of the year and have maintained this part-time residency for at least two years consecutively.
- P.** “**Public art collection**” means the collection of artwork which has been acquired by the NMA for display in public building throughout the state.
- Q.** “**Project director**” means the delegated individual who is responsible for working with the AIPP staff to oversee the art selection process for a commission project. The project director is usually a representative or designee of the owner or the group using the building under construction or renovation.
- R.** “**Prospectus**” means the document issued by the arts division for the purpose of publicly stating the criteria for the specific project. The prospectus is made available to all artists who are interested in applying and are created for each commission project.
- S.** “**Purchase project**” or “**purchase**” means the process of acquiring an artwork that has previously been created by an artist and is selected by the RBC for their site. NMA shall determine the maximum number of artworks a site may purchase.
- T.** “**Regional buying committee**” or “**RBC**” means the committee made up of two to three local representatives of a public building or site receiving AIPP funds for the purchase of artwork. The RBC is responsible for the selection of artwork for their site.
- U.** “**Selection criteria**” means a varying list of qualifications included in the prospectus, which an artist’s submission must meet to be considered by an art selection committee for a public art project.
- V.** “**Site**” means the place where the public artwork shall be located.
- W.** “**Site specific**” means artwork that is created for, and tailored to a particular site and community. Pre-existing artwork does not qualify as site specific.
- X.** “**Submission review panel**” or “**SRP**” means the committee comprised of a minimum of five members who are artists or arts professionals that review artist submissions for purchase projects and make recommendations to NMA, following a set of criteria, for the selection of a manageable number of artworks to be viewed by RBC and purchased by public agencies.
[4.12.11.7 NMAC - Rp, 4.12.11.7 NMAC, 9-30-2009; A, 01-01-2019]

4.12.11.8 ADMINISTRATION OF AIPP PROGRAM AND FUNDS: The AIPP program shall administer and use funds derived from the Art in Public Places Act to acquire works of art, in consultation with art selection committees through either the commission process or the purchase process, for installation and display in, upon, or around public buildings throughout New Mexico which reflect the cultural, ethnic and artistic diversity of New Mexico, the region, and the nation. Public artworks may be an integral part of the building, attached to the building, detached within or outside the structures or placed on public lands, part of a temporary exhibit or loaned or exhibited by the agency in other public facilities.

- A.** The AIPP program may aggregate AIPP funds, when appropriate and with concurrence of the site owner, for a more significant public art project. There is no limit to the amount of funds that may be aggregated and allocated for a specific project.
- B.** The AIPP Program shall determine how auxiliary funds will be utilized.
- (1) Auxiliary funds may be used to acquire and install works of art for existing public buildings in accordance with the Art in Public Places Act, or works of art that are available for loan in, upon, or around public buildings.
 - (2) Auxiliary funds may also be used NMA for administrative costs incurred by NMA for the implementation of the Art in Public Places Act.
- C.** Applicability of Art in Public Places Act.
- (1) A statewide repair appropriation is not subject to the one percent allocation.
 - (2) Determination of whether the Art in Public Places Act applies to a project is made by the AIPP Program and is based on the original appropriation.

(3) Reauthorized appropriations for which the original appropriation was subject to the Art in Public Places Act shall remain subject to the AIPP allocation. In these instances, the one percent allocation shall be placed in the auxiliary fund. If the original appropriation was not subject to the Art in Public Places Act, then no funds will be allocated to the AIPP, regardless of the purpose of the reauthorized appropriation.

D. If after four (4) years and five (5) documented attempts to contact the site owner to spend site-specific AIPP funds, the funds remain unspent, the AIPP funds may, at the discretion of the AIPP Program, be designated as auxiliary funds. Written notice of the auxiliary designation shall be sent to the site owner with a copy retained in the project file.

[4.12.11.8 NMAC - Rp, 4.12.11.8 NMAC, 9-30-2009; A, 01-01-2019]

4.12.11.9 GENERAL COMMISSION PROCEDURES:

A. Project director.

(1) Each AIPP project shall delegate a project director, who is responsible for making the selection process occur. The AIPP office works with the project director and assists them in guiding the selection process.

(2) The project director is usually a representative of the group actually using the particular building under construction, or may be a representative of the owner of the public building, or any other designee.

(3) A description of the project director's responsibilities is available from the AIPP office.

B. The local selection committee.

(1) The most integral component of the AIPP program is that local community members are responsible for the selection of the artwork for their community.

(2) Local participation in decision-making is a major concern of the AIPP office.

C. Membership appointment: The LSC members are appointed by the user or owner of the public building, or his designee, or the AIPP staff.

D. Membership composition.

(1) The LSC is composed of five to 11 members excluding the AIPP staff.

(2) A majority of the individuals on this committee shall be residents of the community in which the project shall take place.

(3) The membership of the committee shall reflect the cultural diversity of the community involved.

E. Committee members shall include the following.

(1) A representative of the residents or *users* of the building.

(2) The owner representative or a designee, of the public building.

(3) An architect, preferably the architect of the construction project (or engineer or other appropriate design or construction professional, associated with the building if possible).

(4) One arts professional or community art representative.

(5) One artist who agrees to abstain from consideration for the project and works in similar media or style of artwork requested in the prospectus.

(6) **All five key members listed above shall be present for a meeting to occur.**

(7) Up to two community or student representatives or a member of the board of regents for a college or university shall serve on the LSC.

F. LSC responsibilities.

(1) The LSC is responsible for the selection of art for the identified public building, using a public selection process and adhering to the procedures developed by NMA.

(2) Each AIPP project has a defined amount of state money available for the commission of art.

(3) The LSC may raise additional funds through other sources to supplement the state funding or secure the donation of in-kind services to assist the selected artist in the creation of his artwork.

(4) The LSC shall collaborate with the AIPP staff to develop the specific criteria for the project to be included in the prospectus. The AIPP staff develops the prospectus and the LSC approves of the document prior to its circulation to the public.

(5) The LSC shall select the artist for the project based on the prospectus and specific criteria included in a written and tangible proposal for the proposed artwork.

(6) A majority vote is required for an artist to be selected as the final artist and the selection shall be formally approved, duly moved and seconded.

[4.12.11.9 NMAC - Rp, 4.12.11.9 NMAC, 9-30-2009; A, 01-01-2019]

4.12.11.10 GENERAL PURCHASE PROCEDURES:

- A. NMA shall develop and advertise a prospectus that invites artists meeting specific criteria outlined in the prospectus, to apply with previously created artwork for review to be selected by sites.
- B. The SRP shall review the artist submissions based on criteria specific to the prospectus and determine which artworks will be presented to the RBC for selection of artwork for a site.
- C. The RBC representatives from a site shall review and select artwork for their specific site.
- D. It is desired that a visual art professional or artist participate in the RBC art selection process to serve as a resource person.

[4.12.11.10 NMAC - N, 9-30-2009; A, 01-01-2019]

4.12.11.11 OVERVIEW OF ART SELECTION PROCESS:

- A. An AIPP staff member shall guide the art selection committee through the art selection process.
- B. Meetings of the LSC shall be held at the building site or any other suitable location. RBC meetings shall take place at a central public location within each region.
- C. There shall be a minimum number of meetings for the RBC to purchase artwork, although the LSC may meet numerous times for a commission project.
- D. After a prospectus is developed and advertised, artists may submit for the project according to the terms of the prospectus.
- E. The art selection committee shall evaluate the artist submissions and select an artist or artwork for the project.
- F. Each of these steps may vary in length of time and number of meetings necessary to accomplish the acquisition or commissioning of the artwork.

[4.12.11.11 NMAC - Rp, 4.12.11.11 NMAC, 9-30-2009]

4.12.11.12 DEVELOPMENT OF THE PROSPECTUS:

- A. There are two types of prospectuses.
 - (1) Purchase prospectus - created by AIPP staff for several sites. Each site's RBC selects artwork for its facility.
 - (2) Commission prospectus - created by AIPP staff in collaboration with the LSC. These are site-specific works created exclusively for a certain location.
- B. For a commission prospectus.
 - (1) The LSC shall consider various criteria in order to identify what type of art it is looking for. The criteria must be written into a prospectus.
 - (2) LSC members have a responsibility to determine as much about what they want as possible and to include that information in the prospectus, in order not to waste their own time reviewing needless submissions, or the time of artists in preparing inappropriate submissions.
- C. Factors to be considered for the prospectus include the following.
 - (1) Location - interior, exterior and any other particular locations should be considered. When possible, AIPP staff encourages the art selection committee to select artwork that can be an integral part of the structure.
 - (2) Medium - determination of suitable materials composing the artwork, size/scale of the artwork, two or three dimensional artwork, maintenance and the budget available in relation to the scope of the project and potential sites.
 - (3) Style - the style an artist uses to express his ideas. For example, traditional, folk-art, abstract, non-objective, figurative, representational, etc.
 - (4) Eligibility - all competitions are open to New Mexico artists, and, depending on the scope of a project, the competition may be open to larger regions.
 - (5) Receipt deadline - the designated date when artist submissions must be received by NMA to remain eligible for the project. The art selection committee shall not review late submissions or incomplete artist submissions.
 - (6) Art selection process - all AIPP projects must be open and fair competitions.
 - (7) Submission requirements - the specific materials the artist must submit as part of the artist submission.
- D. Distribution of the prospectus - the prospectus shall be advertised and distributed in such a way as to reach as many artists as possible and shall include one or more of the following methods:

- (1) NMA email blast, newsletter, the NMA website--www.nmarts.org, and NMA social media outlets (e.g. Facebook, Instagram) or other comparable methods.
- (2) Public service announcements - the NMA staff shall send public service announcements to appropriate media, including newspapers, arts publications, and radio stations, locally, statewide and nationally.
- (3) Press advertisements - the art selection committee may designate one member who shall make sure the project is advertised in the local media.
- (4) Other information outlets - traditional media outlets are often insufficient to generate the participation of certain artists. If an art selection committee is interested in a particular constituency group, the art selection committee members shall make an effort to make whatever contact possible with members of that group and enlist their help in spreading the word.
- (5) Invitational competition. - in addition to having a competition open to all eligible artists, prospectuses may be distributed to targeted artists to encourage them to apply.
[4.12.11.12 NMAC - Rp, 4.12.11.12 NMAC, 9-30-2009; A, 01-01-2019]

4.12.11.13 REVIEW OF ARTIST SUBMISSIONS:

- A.** The art selection committee shall review the submissions of the artists who have responded to the prospectus with complete and timely submissions.
- B.** At a purchase review meeting, the SRP shall determine the artwork that will travel to the purchase sites for RBC review.
- C.** For most commission projects, a number of finalists shall be identified, who are then requested to submit additional materials, usually a site-specific tangible (both written and created) proposal for the artwork and a presentation to the LSC. No more than five finalists shall be selected for each site.
[4.12.11.13 NMAC - Rp, 4.12.11.13 NMAC, 9-30-2009]

4.12.11.14 FINAL SELECTION:

- A.** The final selection of an artist and artwork for a commission project shall be made by the LSC, as described at 4.12.11.9 above. The final selection of the artwork for a purchase project shall be decided by the site's RBC.
- B.** AIPP staff shall notify the selected artist in writing, addressing any follow-up information requested by the art selection committee.
- C.** In the notification letter, AIPP staff must clarify that although the artist has been selected, no binding agreement is in place unless and until a contract is signed by the artist, the owner, and NMA.
- D.** Notice shall also be provided by AIPP staff to those artists who submitted but were not selected for the project.
[4.12.11.14 NMAC - Rp, 4.12.11.14 NMAC, 9-30-2009]

4.12.11.15 VARIATIONS TO PROCEDURES:

- A.** NMA has established these procedures as guidelines to be followed in the art selection process.
- B.** Opportunities may be identified during the art selection process that may require modification to these procedures.
- C.** Variations may be incorporated into the art selection process with the approval of the AIPP program director.
[4.12.11.15 NMAC - Rp, 4.12.11.15 NMAC, 9-30-2009; A, 01-01-2019]

4.12.11.16 CONTRACT DEVELOPMENT:

- A.** NMA has established these procedures as guidelines to be followed in the art selection process.
- B.** All responsibilities involved in the execution, delivery and installation of the work of art must be delineated in the contract.
- C.** No art selection process shall be considered final and binding unless and until all the required signatures on the contract have been obtained. The contract shall be signed by the artist, the owner agency, NMA and any other state agency as may be required by state law.
- D.** After all signatures required on the contract have been obtained, the artist or holder of the artwork shall be notified and the work of art may be either delivered or created.
[4.12.11.16 NMAC - Rp, 4.12.11.16 NMAC, 9-30-2009]

HISTORY of 4.12.11 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the state records center & archives under:
NMAD 88-1, New Mexico Arts Division Grants Guidelines 1988-89, filed 3-28-88.
NMAD 89-1, New Mexico Arts Division Grants Guidelines 1989-90, filed 1-9-89.
NMAD 89-3, New Mexico Arts Division: Arts in Education Grants Guidelines 1989-1990, filed 3-24-89.
NMAD 90-1, New Mexico Arts Division 1990-91 Program Guidelines, filed 2-7-90.
NMAD 91-1, New Mexico Arts Division 1991-92 Program Guidelines, filed 2-26-91.
NMAD 91-1, Amendment 1, filed 12-20-91.
NMAD 93-1, New Mexico Arts Division 1993-94 Program Guidelines, filed 1-8-93.
NMAD 93-1, Amendment 1, New Mexico Arts Division 1994-95 Program Guidelines, filed 6-30-94.

History of Repealed Material:

4 NMAC 12.11, Art In Public Places Program - Repealed 7-31-2000.
4.12.11 NMAC, Art In Public Places Program (filed 7-12-2000) - Repealed 11-13-2003.
4.12.11 NMAC, Art In Public Places Program (filed 10-28-2003) - Repealed 9-30-2009.

Other History:

NMAD 93-1, New Mexico Arts Division 1993-94 Program Guidelines (filed 1-8-93) that relevant portion replaced by 4 NMAC 12.11 NMAC, Community Art Resources - Art in Public Places Program, effective 10-15-1998.
4 NMAC 12.11 NMAC, Community Art Resources - Art in Public Places Program (filed 9-30-1998) replaced by 4.12.11 NMAC, Community Art Resources - Art in Public Places Program, effective 7-31-2000.
4.12.11 NMAC, Community Art Resources - Art in Public Places Program (filed 7-12-2000) replaced by 4.12.11 NMAC, Community Art Resources - Art in Public Places Program, effective 11-13-2003.
4.12.11 NMAC, Community Art Resources - Art in Public Places Program (filed 10-28-2003) replaced by 4.12.11 NMAC, Community Art Resources - Art in Public Places Program, effective 9-30-2009.