



Center for Agriculture
& Food Systems
VERMONT LAW & GRADUATE SCHOOL

Webinar

Contracting Solutions for Public Sector Entities to Increase Local Food Purchasing

September 16, 1 – 2 p.m. ET

Lihlani Nelson

Center for Agriculture and Food Systems

Brittany Peats

*Maine Department of Agriculture,
Conservation & Forestry*

Amanda Karls JD

Foodvocate LLC

Agenda

- 1) Welcome and Introductions
- 2) Local food procurement policy overview and trends – Lihlani Nelson
- 3) Case Study from Maine –Brittany Peats
- 4) Overview of new resource for state and local public sector entities who contract with food distributors – Amanda Karls
- 5) Wrap up and Q&A

Speakers

Lihlani Nelson, Deputy Director and Senior Researcher at the Center for Agriculture and Food Systems (CAFS), Vermont Law & Graduate School

Amanda Karls, J.D., Principal of Foodvacate LLC and CAFS Research Affiliate

Brittany Peats, Local Foods Procurement Planning and Research Associate at the Maine Department of Agriculture, Conservation & Forestry in the Agricultural Resource Development Division



Center for Agriculture
& Food Systems
VERMONT LAW & GRADUATE SCHOOL

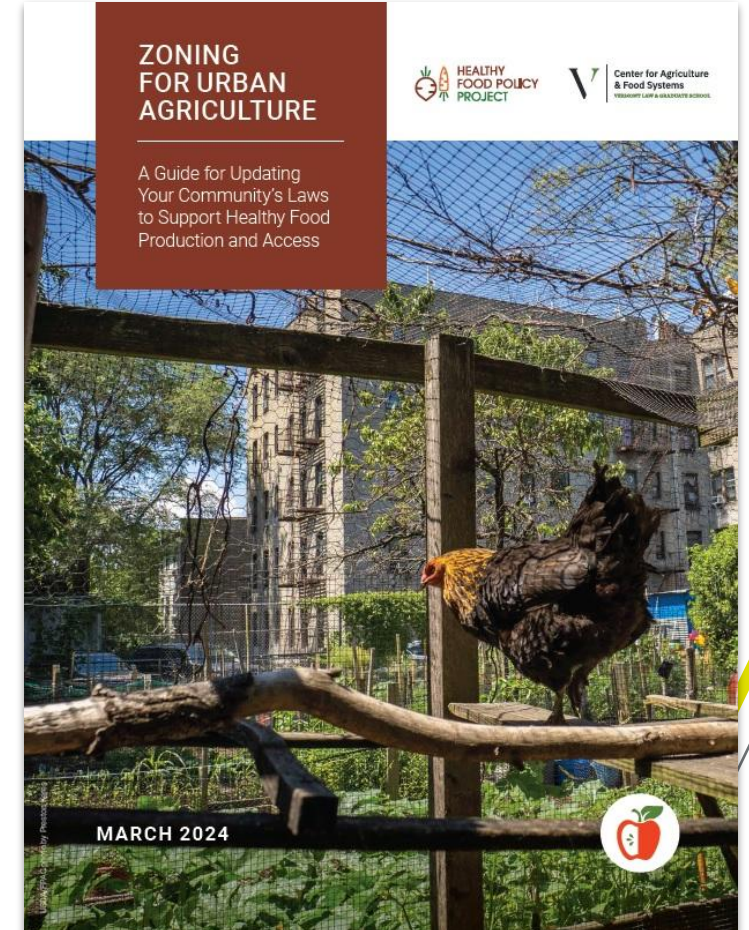
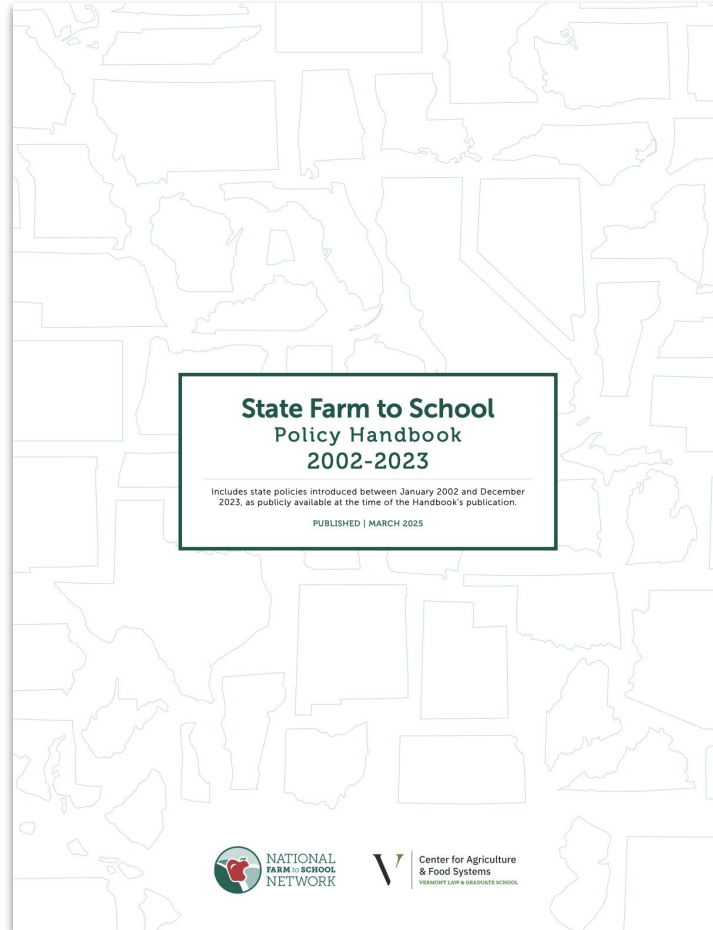
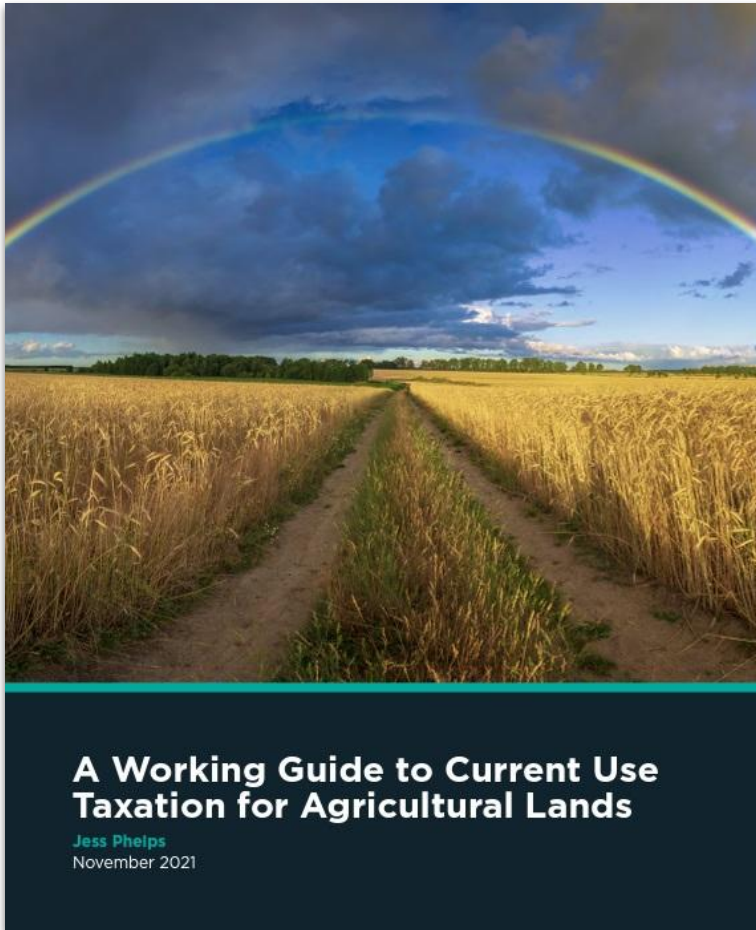
With our students and partners, we produce original scholarly research in the field of food and agricultural law and policy to serve the broadest range of food system stakeholders.



CAFS Projects

- Farmers Market Legal Toolkit
- Farmland Access Legal Toolkit
- **Healthy Food Policy Project**
- Urban Agriculture Policy
- National Gleaning Project
- Seafood and Fisheries
- Labels Unwrapped
- Farm, Food, & Rural Workforce Protections
- Seeds and Biodiversity
- **Institutional Food Procurement Policy**

CAFS Resources





Center for Agriculture and Food Systems

AT VERMONT LAW AND GRADUATE SCHOOL

We equip students with professional expertise, create broadly accessible resources, and provide legal support in food and agricultural law and policy.

RESOURCE LIBRARY

PROJECTS



cafs.vermontlaw.edu



Local food procurement policy trends

- Farm to school state policies and funding for local procurement
- Local food purchasing incentives
- Good food purchasing program and policies
- Prison food procurement
- State local preference requirements and purchasing targets
- Food is Medicine programs
- Federal rules expanding geographic preference

State-level Local Food Purchasing Targets

- States can create specific mandatory quotas (for example, 20% of food purchased must be produced in the state)
- Can be paired with price preference or incentives
- Typically apply to food served in public institutions (schools, government-run hospitals, and carceral facilities) or food purchased for other publicly operated or funded settings

Why do contracting strategies matter?

- RFPs can specify minimum percentage of food to be sourced locally and require source reporting
- Vendor selection can be better aligned with local food purchasing targets
- Flexible contract terms like off-contract purchase allowances can increase options for local food purchases



Brittany Peats

Case study from Maine

Maine foods procurement program

“In accordance with this section, the commissioner shall establish and promote a Maine foods procurement program with the goal that, no later than 2025, 20% of all food and food products procured by state institutions are Maine food or food products.”

State institutions include:

- Correctional facilities
- State-run hospitals
- Community colleges

Three relevant Maine agencies:

- Department of Corrections (DOC) operates the prisons
- Department of Financial and Administrative Services (DAFS) writes the contract
- Department of Agriculture, Conservation and Forestry (DACF) supports local procurement



State Prime Food Vendor Contracts

3 contracts specify how 15 state-funded institutions can purchase food



State Prime Food Vendor Contracts

The Department of Financial and Administrative Services issues the Request for Quotes (RFQ)



Food distributors submit bids



DAFS selects the winning bid



DAFS writes the contract + Food distributor signs it



The Institutions order food + Food distributor delivers it

Maine prisons' food program on track to become national model

The state's Department of Corrections is a leader in food service and culinary training and now is working with outside organizations to replicate its approach.

Posted February 18, 2023 Updated February 18, 2023

Tim Cebula
Staff Writer



Center for Agriculture
& Food Systems
VERMONT LAW & GRADUATE SCHOOL



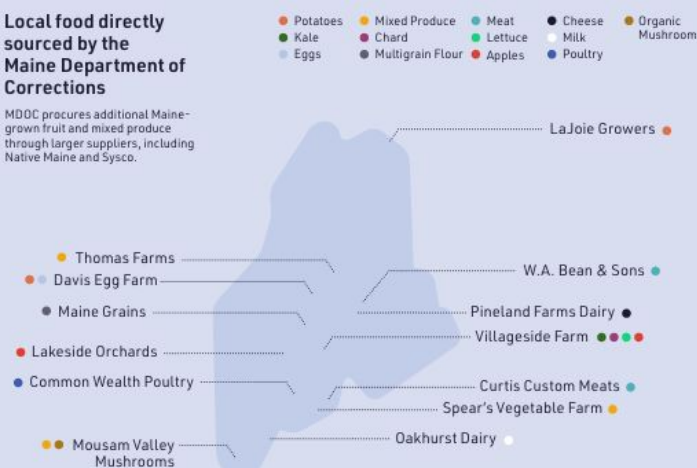
↑ Produce grown at Mountain View Correctional Facility (Charleston, Maine)
Source: Mark McBride

FRESH FOOD GROWN ON SITE

WHEN IT COMES TO FRESH FOOD, MOUNTAIN VIEW CORRECTIONAL FACILITY IN CHARLESTON, MAINE, IS A NOTABLE EXCEPTION TO THE PREVAILING NATIONAL TREND OF MINIMAL FRESH PRODUCE.

Local food directly sourced by the Maine Department of Corrections

MDOC procures additional Maine-grown fruit and mixed produce through larger suppliers, including Native Maine and Sysco.



The New York Times

The 'Hidden Punishment' of Prison Food

In Maine, inmates are growing vegetables and making meals from scratch to replace the deadly diets they have long been served.

March 2, 2021



Some of the inmates who cultivate and harvest the crops at Mountain View Correctional Facility in Maine. From left, Dale Nadeau, Shayne Felcher, Lloyd Macfarlane, Alexander Roth and Jeremiah Bailie. Patricia Leigh Brown

Evolving Understanding of the Contracts

Confusion around the contracts:

- Could the DOC facilities purchase off contract? How much? At what price?
- What would happen to the relationships DOC had developed with local purveyors if they could no longer purchase from them?
- Do the contracts align with the state goals around local procurement?

Some positive steps:

- DAFS, DOC, and DACF leadership met.
- There is now a process by which DOC can purchase from local food vendors.
- Talked with Vermont Law School about how to improve contract language.

Hopes for the future:

- The state goals will be included in future RFQs and contracts.
- DAFS, DOC, and DACF will collaborate on future RFQs.
- Local food producers will help to shape the RFQs.
- Legislators will pass a bill to strengthen the state local procurement goals and state contract language.





CONTENTS

I. INTRODUCTION	4
Overview	5
Key Takeaways for Public Sector Procurement Teams	6
Glossary of Key Terms	7
II. HOW TO PREPARE FOR THE BID SOLICITATION PROCESS	8
Understand the Food Service and Sourcing Contract landscape	8
Review Current Contracts	11
Consider Vendor Options	11
Work with Legal Counsel to Understand the Legal landscape	12
Create Communities of Practice	16
III. VENDOR SELECTION AND CONTRACT DRAFTING	17
Use Local-Sourcing-Related Technical Specifications to Qualify Bidders	17
Consider Specifying Flexible Contract Terms	20
IV. CONCLUSION	21
V. APPENDIX	22
Additional Resources	22
Example State Policies that Establish Targets for Local Food Procurement	23
Hypothetical Example Contract Review	26
Example Documents and Draft Clauses that Emphasize Local Food Sourcing in Food Vendor Contracts and RFPs	27

A Few Housekeeping Caveats

The resource and today's presentation:

- Do not include legal advice, and are not intended as a substitute for legal advice
- Are not intended to advocate for any specific legislative or other policy approach in any given state or locality



Guide Overview

- Contextualizes how food distributor contracts fit within the landscape of other supplier options
- Outlines how public sector entities (PSEs) can prepare for the bid solicitation process
- Highlights approaches for solicitation, bid selection, and contract drafting
- Provides guidance for PSEs to consider options for monitoring and assessment to incorporate into contracting terms

Additional Features

- A hypothetical contract review scenario
- Sample and draft solicitation and contracting language
- Links to other great resources

Focus of Resource is on Food Distributor Contracts

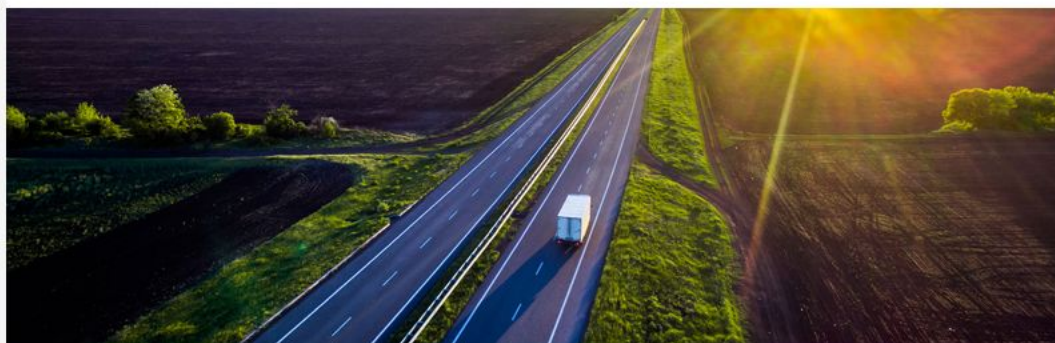
Food distributor contracts differ from, for example, food service management company (FSMC) contracts

Understand the Food Service and Sourcing Contract Landscape

Obstacles to local food procurement within supplier bidding and contracting processes vary depending on the type of contract. Contracts may cover a range of scenarios, including food services, food purchases, or both, and may be exclusive or non-exclusive.¹⁴ This guide focuses on food distributor contracts (described in [Table 1](#)), particularly exclusive or near-exclusive food distributor contracts, as well as non-exclusive food vendor contracts that PSEs choose to rely on exclusively or nearly exclusively for multi-line product sourcing even when the contract does not require them to do so.

Common Public Sector Food Service and Sourcing Contract Types

In addition to food distributor contracts, food service management contracts ([Table 2](#)) and food producer contracts ([Table 3](#)) can also be used for food service and sourcing needs. Those contract types are not the focus of this guide, but it is important to understand how they can be structured and how they relate to and compare with food distributor contracts. [See the Glossary](#) for detailed descriptions of these contract types. Other contract models exist that are not included in this guide, including meal delivery service contracts.¹⁵



OPTIMIZING FOOD DISTRIBUTOR CONTRACTS TO ACHIEVE LOCAL FOOD PROCUREMENT TARGETS
CONSIDERATIONS FOR STATE AND LOCAL PUBLIC SECTOR ENTITIES

HOW TO PREPARE FOR THE BID
SOLICITATION PROCESS | 8

Check-In Question

- Have you tried adapting your contracts specifically to encourage local sourcing?
 - Options: Yes, No, Currently exploring



Glossary



A Few Key Terms

Comprehensive Food Service Management Contract

A contract between a client and an FSMC that engages the FSMC to manage a range of food service functions, including food procurement.

Broadline Food Distributor Contract (Exclusive or Near-Exclusive)

A contract between a client and a broadline food distributor (that does not supply any food service functions) to engage the distributor to supply products across multiple product lines.

Flexibilities for Broadline Food Distributor Contracts

There are **key differences in the relationship dynamics** with comprehensive food service management companies versus those with broadline food distributors.

The differences can create **additional flexibilities** when working with distributors.

Including clauses standard in food service management contracts in distributor agreements can **unnecessarily limit these flexibilities**.

How to Prepare for Bid Solicitation Process

- Understand the Food Service and Sourcing Contract Landscape
- Review Current Contracts
- Consider Vendor Options
- Work with Legal Counsel to Understand the Legal Landscape
- Create Communities of Practice



Legal Landscape: Local Purchasing Preferences or Requirements

Many states and some municipalities set local food purchasing targets as either a goal or a required quota.

West Virginia Example:

“Beginning July 1, 2019, each state-funded institution, including, but not limited to, schools, colleges, correctional facilities, governmental agencies, and state parks, ***shall obtain a minimum of five percent of its food from in-state producers.***”

W.Va. Code § 1937-2 (emphasis supplied).



Legal Landscape: Vendor Selection Criteria

Laws can dictate vendor options by dictating high-level bid-selection parameters. Some laws may specify selection of the:

- Lowest responsible bid
- Lowest responsible, responsive bid
- Best value bid



Legal Landscape: Vendor Selection Criteria

Work with legal counsel to understand what these criteria mean and where they do and don't offer flexibility in prioritizing local food goals.

Understanding your options will help you confidently set and apply bid selection criteria with as much built-in preference for local food capabilities as is legally allowed.



Legal Landscape: Policies that Specify Geographic Preference

Examples:

“Tiebreaker” preference, such a law that requires selection of a vendor offering food grown within the state if it is one of two or more producers that can provide the same product for otherwise equal terms.

“Reasonably Exceeds” or **“Price Percentage”** preferences, including laws that permit or require public sector entities to purchase higher-priced products from a vendor that can supply products from in-state producers, such as by applying a discretionary discount or a certain percentage discount against the locally-sourced offerings.

Legal Landscape: Options Outside of Formal Bidding Processes

State and local laws may allow **non-competitive purchasing** under “small purchase” and other thresholds.

Purchasing within these thresholds can support **locally sourced food procurement**.

Purchase Now



Purchase Now



Purchase Now



Local-Sourcing-Related Technical Specifications to Qualify Vendors

Resource contains:

- **Guidance** on how to build specifications into bid solicitation requests and evaluation rubrics
- **Example RFPs** with Evaluation Criteria that Emphasize Local Food Sourcing in Food Contracts
- **Example Scoring Rubrics**

What Other Guidance is Needed?

- What type of support or guidance would make implementing local sourcing contracting easier for your team? What are the challenges you are encountering?



Any Questions?



Center for Agriculture
& Food Systems
VERMONT LAW & GRADUATE SCHOOL



 cafs.vermontlaw.edu

   @CAFScenter

Contact Us:

Lihlani Nelson, Lnelson@vermontlaw.edu

Amanda Karls, amandajgkarls@gmail.com

Brittany Peats, brittany.peats@maine.gov



Center for Agriculture
& Food Systems

VERMONT LAW & GRADUATE SCHOOL



 cafs.vermontlaw.edu

   @CAFScenter