

Optimizing Food Distributor Contracts to Achieve Local Food Procurement Targets

Considerations for State and Local Public Sector Entities



Center for Agriculture
& Food Systems
VERMONT LAW & GRADUATE SCHOOL



HEALTHY
FOOD POLICY
PROJECT

MAY 2025

ABOUT THIS GUIDE

This resource was developed on behalf of the [Healthy Food Policy Project](#) (HFPP). Amanda Karls JD, was the primary researcher and author, and Lihlani Nelson, Deputy Director and Senior Researcher at the Center for Agriculture and Food Systems (CAFS), served as lead editor, with additional review from the CAFS team by Laurie Beyranevand, Director, and Austin Price, Communications Manager.

We also thank Brittany Peats, Institutional Market Development Coordinator for the Maine Department of Agriculture, Conservation and Forestry for her support in developing and editing this resource and for providing numerous contract and solicitation document examples. Additional review was provided by Sarah Blau MPH, Public Health Promotion Specialist, Division of Community, Health and Equity, Rhode Island Department of Health, whose suggestions and feedback were invaluable.

This guide is not intended as a substitute for legal advice and is not intended to advocate for any specific legislative or other policy approach in any given state or locality. Furthermore, this guide is not an exhaustive compendium of all possible approaches for optimizing contracting processes with food distributors to support local food purchasing targets. It is informed by our review of various contracts, bidding solicitation documents, reports, toolkits, and other literature related to this topic. We also incorporated insights shared by our network regarding the challenges of achieving local food purchasing targets. However, our review was limited by the project scope, including the parameters of HFPP's 2024 [Consultation and Resource Development Lab](#).

About the Center for Agriculture and Food Systems



The Center for Agriculture and Food Systems (CAFS) is a research-based institute housed at Vermont Law and Graduate School. With law and master's students, CAFS produces original scholarly research in the field of food and agriculture law and policy to serve the broadest range of food system stakeholders.

With local, regional, national, and international partners, CAFS addresses food system challenges related to food and nutrition security and affordability, farmland access, food system workers, farm viability, local economies, and public health, among others. CAFS works closely with its partners to provide legal services and develop resources that respond to their needs. Through CAFS Food and Agriculture Clinic and Research Assistant program, Vermont Law and Graduate School students work directly on projects alongside partners nationwide, engaging in innovative work that spans the food system.

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I. INTRODUCTION

Across the United States, state and local governments have implemented values-aligned food procurement policies to promote access to nutritious food while boosting local economies. One approach has been to establish purchasing targets for state, regional, or other proximally sourced food (collectively known as “local food”). These purchasing targets are as aspirational goals or specific mandatory quotas set through the legislative process or by executive order. They typically apply to food served in public institutions—such as schools, government-run hospitals, and carceral facilities—or food purchases for other publicly operated or funded settings. This resource includes several state-level policy examples that establish targets for local food (see [“Example State Policies that Establish Targets for Local Food Procurement”](#) in the Appendix of this guide).

The economic impact of purchasing targets can be substantial and result in potential benefits beyond the institutions that purchase and serve food.¹

Local food procurement supports local farmers and businesses—creating jobs, stimulating the local economy, and reducing dependency on external markets or imports.

Sourcing food locally also reduces the carbon footprint associated with transportation and storage and encourages the consumption of seasonal produce, which can lead to a more balanced and nutritious diet. Moreover, local food procurement can foster a sense of community by connecting consumers with local producers.²

Yet, even where local food procurement targets are set or even mandated by law, procurement officials and purchasing staff encounter challenges including: enforcement limitations, cost constraints, logistical distribution challenges, seasonal variability of local produce, insufficient source tracking and labeling of local products, equipment limitations, inadequate staff training on fresh food handling, and aligning supplier procurement practices with institutional needs, among other issues.³

Legislators, agencies, and government executives may consider several policy options to meet local food procurement targets and other local food sourcing efforts, including financial incentive strategies such as matching funding for public sector entities (PSEs) that source locally.⁴ In addition, PSEs can also adjust their internal contracting processes to support those public policy aims, including at the vendor solicitation and contract negotiation stages. This guide explores some of those options for PSE contracts with *food distributors* (see definition in the [Glossary](#)). Some of the options covered below may also be relevant for other types of food vendor contracts, including contracts with food service management companies (FSMCs). Though much has already been written elsewhere about FSMC contracting,⁵ the distinction is important because food distributor relationships can be more flexible than many FSMC business models allow.

OVERVIEW

To explore some of the ways public sector entities (PSEs) might optimize their contracting processes with food distributors to increase local food procurement, this guide does the following:

- Contextualizes [how food distributor contracts fit within the landscape of other supplier options](#)—including contracting with FSMCs and individual suppliers;
- Outlines [how PSEs can prepare for the bid solicitation process](#) to optimize solicitation documents and contracts;
- Highlights [approaches for solicitation, bid selection, and contract drafting](#) that align food distributor solicitation documents and contracts with local food procurement targets; and
- Provides guidance for PSEs to consider [options for monitoring and assessment](#) to include local food sourcing in contract terms.

This guide also includes an [Appendix](#) with supplementary information, including:

- [Additional resources](#), such as guides, toolkits, and reports, that provide more information for procurement teams focused on local food procurement targets;
- [Examples of states with local food procurement](#) targets set by state statute or executive order;
- A [hypothetical contract review](#) scenario that demonstrates how, with the support of legal counsel, procurement teams may explore flexibilities and limitations in food distributor contracts; and
- [Sample and draft solicitation and contracting language](#) that emphasizes local food sourcing.



KEY TAKEAWAYS FOR PUBLIC SECTOR PROCUREMENT TEAMS

- Local food procurement targets that are set in state law or directed by executive order mean that sourcing food locally should be the aim of procurement efforts and may even be an obligation. Public sector entities that currently source food through either one or a limited number of mainline distributor contracts are not always limited to those contracts for future sourcing. This resource can inform how to explore vendor options.
- Food distributors may not always carry a range of food products that fully align with your local food procurement targets. However, contracts with food vendors do not need to limit purchases from other vendors.
- It may be unnecessary to include “off-contract” language in distributor contracts that describes when and how much you may purchase from other vendors through small-purchase and other procurement flexibilities to purchase from local producers. Check with legal counsel for guidance.
- Many jurisdictions have public procurement laws that allow for consideration of factors beyond price when selecting bids for goods and services. Procurement teams should work with legal counsel to understand what allowances are built into these laws and how they may interact with other applicable laws and regulations.
- There are various options for integrating technical specifications and preferences into your solicitation process, including setting minimum bidding requirements and establishing a points-based selection process to preference vendors local-sourcing-related capabilities.
- Technical specifications in solicitation documents and contracts can also support efforts to increase transparency of locally sourced food purchases and fulfill reporting requirements by asking distributors and other vendors to designate their local food offerings and require reporting on the amount of locally sourced food purchased.
- Monitoring and assessment of vendors for compliance is critical to ensure your needs are being met and you are following your requirements.
- Collaboration across institutions both in and outside of your state or locality can build buy-in, and support change to long-standing practices that may not support local food procurement.

Glossary of Key Terms

as used in this resource

Comprehensive Food Service Management Contract (“Comprehensive FSMC Contract”)

A contract between a client, such as a PSE, and an FSMC that engages the FSMC to manage a range of food service functions, including food procurement. May feature one of these revenue structures: Profit and Loss (P&L), in which the FSMC is compensated based on profits generated by the food service operation and typically has more authority to design the food service program, including product-sourcing decisions;⁶ or Management Fee, in which the contractor provides a food service program per the client’s specifications and in exchange for a management fee, with more flexibility for the client to direct aspects of food purchasing.⁷

Contracting Public Sector Entity (“Contracting PSE”)

A PSE that procures goods or services through one or more contractual agreements. A contracting PSE may contract on behalf of itself or other PSEs, such as when a department of education or school district contracts on behalf of multiple public schools or when a state agency procurement officer contracts on behalf of a group of various public institutions.

Exclusive or Near-Exclusive Food Distributor Contract

A contract between a client, such as a PSE, and a broadline food distributor that engages the distributor to supply most or all food products needed to fulfill the client’s needs across multiple product lines.

Food Distributor

An organization that sources food from other vendors—such as manufacturers, farms, cooperatives, and produce aggregators—and distributes that food to institutions and outlets that serve consumers. Food distributors may focus on one type of food product, such as dairy or produce, or may even work exclusively with just one food manufacturer. They may operate using various business models such as a nonprofit regional food hub, or a national for-profit business. However, most food distributors are for profit, wholesale “broadline” distributors that supply a range of products to their clients. Additionally, food service distributors may offer services such as warehousing, transportation, and marketing of products on behalf of manufacturers.⁸

Food Service Management Company (“FSMC”)

An organization that contracts with institutions to offer one or more food service functions such as menu planning, managing meal payment systems, food purchasing, food preparation, staffing, and facility management.⁹

Food Service Management Only Contract

A contract between a client, such as a PSE, and an FSMC that only engages the FSMC for their management services, while maintaining food procurement as a separate activity that is taken on as the responsibility of the public sector institution or another food service provider.¹⁰

Non-Exclusive Food Vendor Contract

A contract between a client, such as a PSE, and a food distributor, food hub, or direct supplier to supply some of the food products needed to fulfill the client’s needs.

Public Sector Entity (“PSE”)

An organization or agency that is part of the government or operates under government authority and is responsible for providing public services. This term is inclusive of both contracting and non-contracting PSEs (see glossary entry for “Contracting PSE,” above). Some PSEs may have purchasing power under a contract but may rely on a contracting PSE to negotiate contracts on their behalf, especially where group “bulk” or “prime” contracts are involved.

Request for Proposal (RFP)

A “document used to solicit proposals from suppliers for commodities, i.e., goods and services. Selection is based on the evaluation of criteria and most often includes price.”¹¹ Other related options for solicitation documents include, e.g., an invitation for bid (IFB).¹²

Split Contract (in FSMC context)

A contract between a client, such as a PSE, and an FSMC that excludes some portion of the client’s food supply needs from the contract, with those excluded foods sourced through one or more additional requests for proposal (RFP).¹³

II. HOW TO PREPARE FOR THE BID SOLICITATION PROCESS

Before initiating the bid solicitation process, contracting public sector entities (PSEs) can take steps to ensure the process is optimized to achieve local food procurement targets. Preparation should include: (a) understanding where food distributor contracts fit within the broader food service vendor contract landscape; (b) reviewing current contracts to understand existing flexibilities and limitations; (c) considering various vendor options to ensure scoping that best aligns food service and sourcing needs; and (d) working with legal counsel to understand the legal landscape, which will define the parameters of available solicitation and bid selection methodologies. Preparation can also include (e) creating internal and external communities of practice to share insights on how to improve contracting processes to support local food procurement.

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

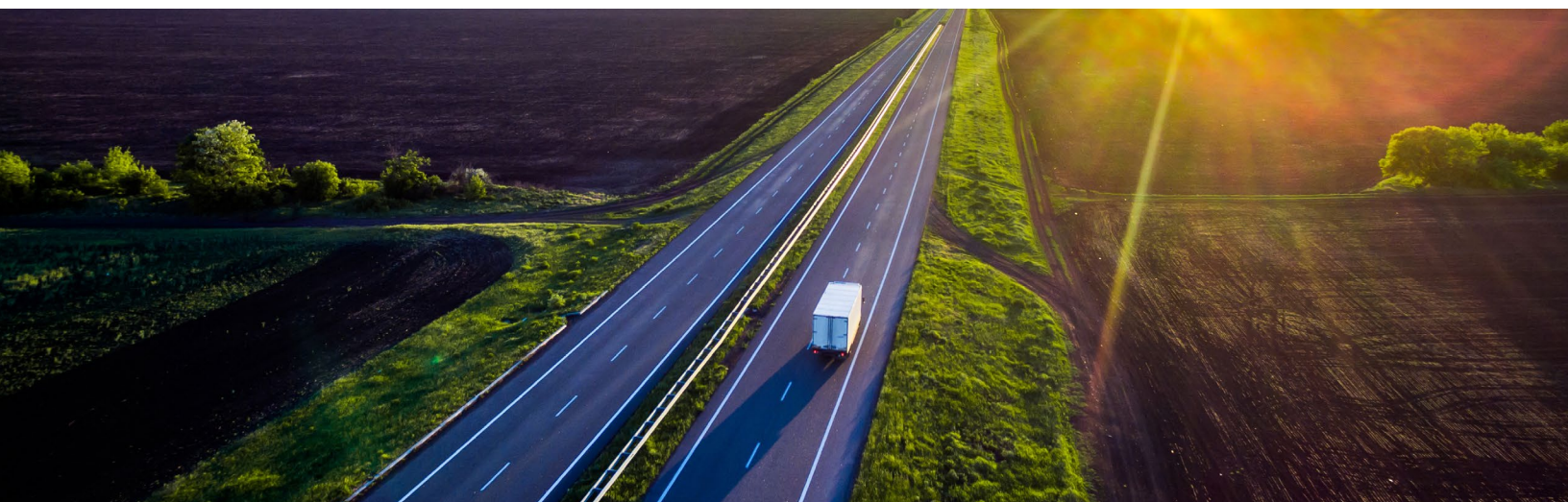


Table 1.**Food Distributor Contracts**

- Exclusive or Near-Exclusive Food Distributor Contracts
- Non-Exclusive Food Distributor Contracts

FUNCTIONALITY/FEATURE	EXCLUSIVE OR NEAR-EXCLUSIVE FOOD DISTRIBUTOR CONTRACTS	NON-EXCLUSIVE FOOD DISTRIBUTOR CONTRACTS
Food service operations responsibility	PSE (agency, department or individual institution)	PSE (agency, department or individual institution)
Food purchasing responsibility	PSE (agency, department or individual institution)	PSE (agency, department or individual institution)
Relative level of flexibility for local food sourcing	May be as restrictive as Comprehensive Food Service Management Contracts, depending on contract terms.	Less restrictive than Exclusive or Near-Exclusive Food Distributor Contracts. May be combined with other Food Distributor or Food Producer Contracts.
Common sourcing limitations	PSEs may be limited to the distributor's catalog of product offerings across multiple product lines, except for any carve-outs for "off-contract" purchases.	Potentially none, depending on available offerings. Local food and other sourcing options are only limited to the extent the contracting PSE's portfolio of contracts limit choice.

Table 2.**Food Service Management Contracts**

- Comprehensive Food Service Management Contracts ("Comprehensive FSMC Contract")
- Food Service Management Only Contracts

FUNCTIONALITY/FEATURE	COMPREHENSIVE FSMCS	FOOD SERVICE MANAGEMENT-ONLY CONTRACTS
Food service operations responsibility	FSMC	FSMC
Food purchasing responsibility	FSMC or PSE (agency, department or individual institution)	PSE (agency, department or individual institution)
Relative level of flexibility for local food sourcing	More restrictive than Food-Service Management-Only Contracts, especially where revenue structure is "profit and loss" rather than "management fee."	Less restrictive than Comprehensive Food Service Management Contracts, depending on PSE's food distributor/producer selections.
Common sourcing limitations	Purchases may be required to go through the FSMC's preferred or approved sources, even where the PSE is the procuring party, with only minimal allowances for "off-contract purchases". May be structured as a "Split Contract" for some added flexibility.	Limitations are largely a function of offerings of the food vendors selected by the institution(s), as these contracts <u>will be paired with one or more food distributor/producer contracts</u> (see below).

Table 3.
Food Producer Contracts

FUNCTIONALITY/FEATURE	DIRECT FOOD PRODUCER CONTRACTS
Food service operations responsibility	PSE (agency, department or individual institution); they generally function the same as Non-Exclusive Food Distributor Contracts (see Table 1)
Food purchasing responsibility	PSE (agency, department or individual institution)
Relative level of flexibility for local food sourcing	Very flexible—generally allow PSEs to select products from any producers that directly supply their geographic market (rather than those within a FSMC or food distributor's portfolio).
Common sourcing limitations	Function the same as Non-Exclusive Food Distributor Contracts (see Table 1) for the most part, but additional contracts may be required to satisfy PSEs' procurement needs.

Understanding these relationships and contract types is essential for identifying the most effective strategies to overcome procurement obstacles and enhance local food sourcing. For example, a contracting PSE that has previously worked exclusively with a single distributor under an exclusive arrangement might find that non-exclusive vendor contracts with multiple local vendors would provide more flexibility and access to a variety of fresh, seasonal produce. By tailoring solicitations to the specific needs of each scenario, public sector procurement teams can better support local food systems and achieve their sustainability goals or requirements.



Review Current Contracts

By reviewing existing provisions in current contracts, procurement teams can pinpoint clauses that may restrict local procurement. Provisions that can limit local food purchasing include:

- exclusivity clauses (which may limit PSEs from contracting with other vendors);
- off-contract purchasing restrictions (which can also limit contracting with other vendors, for example, by putting a dollar amount or other cap on those purchases or by requiring PSEs to demonstrate that the purchase can be made less expensively through another supplier);
- guaranteed order amounts or other scope of work commitments; and
- limitations on reducing the contract scope during the contracted period of performance.

While the distributor may have practical reasons for including these provisions, contracting PSEs may want to discuss whether distributors are willing to relax or eliminate them. Conversely, the review process may also identify opportunities for flexibility such as provisions for seasonal adjustments or allowances for sourcing from multiple suppliers. Where terms are unclear or ambiguous, contracting PSEs should consider inquiring with legal counsel about their meaning and effect.

In addition to identifying current opportunities and barriers to local food sourcing, by thoroughly reviewing current contracts, procurement teams can gain insights that inform future bidder solicitation processes. This understanding can help contracting PSEs craft solicitations that attract bidders capable of supporting local food purchasing targets and negotiate terms that better align with that objective. A hypothetical fact scenario illustrating this type of review process is included in the Appendix.

Note: Although we have included this as a potential step prior to bid solicitation, contract review should be iterative. In other words, PSEs should review any standard contract language a distributor or other vendor requests during the contract drafting stage and review and consider terms for amendment after a contract has been executed.

Consider Vendor Options

Prior to drafting bid solicitations, contracting PSEs can review their scoping options and consider how to allocate their purchasing dollars among one or more vendors. Contracting PSEs—including PSEs that contract on behalf of several other PSEs such as for state-wide contracts—may sometimes choose to contract with one multi-line “prime” distributor for all or almost all food supply needs. Practical reasons for this choice include geographic constraints that may limit food distribution options in some regions, volume pricing, and other efficiencies. In exchange for these efficiencies, contracting PSEs may sometimes voluntarily enter contracts that require exclusivity or allow only a small percentage of the needed food supply to be purchased “off-contract,” e.g., not through the distributor.

However, contracting PSEs that find themselves in contractual relationships with a limited number of distributors or with suppliers that are unable or unwilling to align their product offerings with local food procurement targets should consider whether such customary practices can be set aside. Where circumstances allow, contracting PSEs may consider different or additional vendors that can provide a more optimal product mix that better aligns with their procurement goals or requirements and provides the logistical flexibility needed to align their actual purchases with those goals.

PSEs that contract with food distributors may have more flexibility negotiating than those contracting with food service management companies (FSMCs). The FSMC business model typically requires those contracting with the FSMC for food services (such as menu planning, meal payment systems, food preparation, staffing, and facility management) to agree to a pre-negotiated supply chain that restricts food options.¹⁶ If the contracts separate food sourcing from food services, contracting PSEs may be free to choose any qualified distributors or vendors in the relevant market.

To find potential vendor options, contracting PSEs can periodically evaluate the market for potential suppliers who can meet some or all their procurement goals. A commonly used tool for this purpose is a “Request for Information” (RFI).¹⁷ The information received in response to an RFI can help identify potential options that fulfill the contracting PSE’s needs.¹⁸ We have included [sample RFIs](#) in the Appendix.

Work with Legal Counsel to Understand the Legal Landscape

Contracting PSEs must navigate a variety of laws and administrative rules when drafting solicitation documents and selecting bids. For example, each state has its own procurement laws and regulations that dictate permissible bid selection processes.¹⁹ Local governments often also have additional procurement requirements that can exceed state requirements.²⁰ Moreover, PSEs may also need to consider other procurement-related legal requirements, such as those relating to ethics and integrity, environmental sustainability, certain types of businesses, and public financing.²¹

When federal funds are used by state and local governments, federal laws and regulations may also control aspects of the solicitation and contracting processes. The Uniform Administrative Requirements for Federal Financial Assistance (“Uniform Guidance”) generally governs the use of federal grant funds and can impose additional requirements.²² Depending on the federal program providing the funding, there may also be rules that specify parameters and/or areas for flexibility. For example, in April 2024, federal government announced new school meal standards that allowed schools to give local preference without violating federal procurement regulations through a geographic preference option.²³

While a full exploration of the various procurement laws and other policies that might apply is beyond the scope of this guide, state and local procurement teams should consider the following types of general procurement laws: (1) policies that dictate bid selection parameters; (2) policies that allow or mandate a bid preference for state-grown or made foods and/or in-state sourced products; and (3) policies that allow non-competitive flexibilities for orders under “small-purchase” and other specified thresholds. Each of these is discussed below. Guidance from legal counsel on the application and impact of these types of laws can ensure that procurement teams understand both the flexibilities and limitations for prioritizing local food procurement in their bid selection processes.

1) Policies that dictate bid selection parameters

State, and sometimes local, procurement laws specify how bids can be evaluated. In some cases, government may use a “lowest responsible bid” mandate, which prevents institutions from considering criteria other than cost.²⁴ Institutions may also be accustomed to treating goods of the same type such as “low-fat milk” or “bananas” as equal in value, such that price becomes the only criteria of focus.²⁵ However, use of “lowest responsible bid” criteria may not be the only permissible bid selection methodology allowed by law. Other approaches include:

- **Lowest Responsible, Responsive Bid**

Some state and local laws direct or allow contracts to be awarded to the bidder who offers the lowest price, provided they are responsible (i.e., possess the requisite qualifications, financial capacity, and reliability to complete the contract) *and responsive* (i.e., adhere to the specifications of the solicitation).²⁶ While this terminology may sound like “lowest responsible bid” methodology, it can allow for a broader range of non-price criteria to be considered. See the resource entitled “Fact Sheet: Responsiveness v. Responsibility” in the [Additional Resources](#) section below, to learn more about this method and the criteria that may apply to evaluate “responsiveness” and “responsibility,” respectively.

- **Best Value Bid**

Some state and local laws direct or allow procurement officials to select the bid that provides the best “value.” Depending on how this approach is specified by the parameters of the law, it may allow officials more discretion than the “lowest responsible, responsive bid” approach in evaluating and weighing factors beyond just price, such as experience, technical capabilities, or the ability to meet specific project needs.²⁷

In some cases, more than one selection method may be permissible.



For example, **Texas law** directs that local government contracts may generally be awarded to either: (a) the lowest “responsible” bidder, or (b) the bidder who provides the solicited goods or services at the “best value,” provided that the contracting municipality indicates in the bid solicitation documents which selection criterion it will use.²⁸

Contracting PSEs should work with legal counsel to understand the bid selection methodologies allowed or required under relevant law and how they may be interpreted. Counsel may also provide guidance on how procurement laws interact with other laws and other policies, including those that specifically address local procurement. For example, local food procurement target laws might be used to justify prioritization of local food sourcing technical requirements within either approach.²⁹ (Some possible technical specifications are discussed below.)

Meanwhile, bid preference laws, such as those discussed in the following paragraph, might dictate how local sourcing technical capabilities must be evaluated. For example, they might override how price is normally emphasized using the “lowest responsible, responsive bid” method;³⁰ or dictate how much “value” must or may be attributed to local sourcing capabilities in the “best value bid” method. Working with counsel to understand these nuances is key to determining what types of technical specifications can prioritize local food sourcing capabilities and how much weight can be afforded to those types of specifications.

2) Policies that allow or mandate a bid preference for state-grown or made foods and/or in-state sourced products

Several states allow or mandate bid preference for in-state sourced foods or for other broader categories of in-state sourced goods and services. These laws may require or allow preferences in the contracting process—including so-called “tiebreaker” and “price percentage” preferences.³¹ These can be passed as standalone laws, or as a complement to the types of purchasing target laws discussed above.



For example, **Illinois law** establishes a goal for 20% of all food and food products purchased by state agencies and state-owned facilities to be local farm or food products by 2020 and pairs that procurement target with a price preference for bidders who fulfill contracts with the state using local farm or food products.³²

For more information and examples of states that have implemented bidding preference strategies for food sourcing, see “Regional Trends in New England Farm to Institution Procurement Policy” in the Additional Resources section. For other local bidding preferences, including in-state bidders, and locally produced/manufactured commodities, see also The National Association of State Procurement Officials (NASPO) State Preference Repository, also included in the **Additional Resources** section.

Contracting PSEs should get clear guidance from legal counsel about the effect of these laws because they may dictate technical specifications or otherwise interact with laws that allow or direct “Lowest Responsive, Responsible Bid” or “Best Value Bid” selection approaches. They should also understand whether preferences that favor in-state suppliers can or must be applied to national distributors that work within the relevant geographic area when they commit to sourcing locally.

3) Policies that allow non-competitive flexibilities for orders under “small-purchase” and other specified thresholds.

State and local laws that allow non-competitive purchasing flexibilities for purchases under “small-purchase” and other specified thresholds can support the procurement of locally sourced foods, especially when the thresholds are significant in the context of the overall volume of purchases.³³ These laws may enable PSEs to bypass the formal competitive bidding process for smaller purchases—this includes allowing PSEs that are part of a larger group contract to make some vendor selections autonomously. This streamlines the procurement of locally sourced foods and other products. By reducing administrative burdens and allowing for quicker, more direct transactions with local farmers and producers, these laws help institutions to more easily meet local food procurement goals.



For example, **Wyoming law** permits state agencies to make direct purchases of goods and services, including food, without a formal bidding process if the total cost does not exceed \$15,000.³⁴ This type of flexibility may be especially advantageous where PSEs are not contractually obligated to purchase most or all food needs through a single distributor.





In 2020, Maine enacted legislation to “encourage the procurement of Maine foods and food products by state institutions.”³⁵ The legislation directs the Commissioner of the Department of Agriculture, Conservation and Forestry to “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.”³⁶ Among other changes, the legislation also directs the Commissioner to adopt rules necessary to carry out the Maine foods procurement program.”³⁷ (The contributors to this guide were unable to determine the status of the referenced rules as of the date of publication.)

State law regarding general bid selection parameters provides:³⁸

- Competitively awarded orders, grants, or contracts made by state departments and agencies must be awarded to “the best-value bidder,” which requires the contracting PSE to consider factors like “the qualities of the goods or services to be supplied” and “the best interest of the State.”
- A price preference must be applied for instate bidders. The preference essentially functions as a price disadvantage for non-resident bidders, whereby contracting PSEs are directed to add a percentage increase on the bid of a nonresident bidder “equal to the percent, if any, of the preference given to that bidder in the state in which the bidder resides.”
- PSEs can avoid some competitive bidding requirements for purchases below certain dollar thresholds (\$2,500, \$10,000 and \$25,000), provided other conditions are met.

To increase local food purchasing and meet the 20% local procurement target, contracting PSEs in Maine may want to consider how these laws and any related rules interact with each other and other legal requirements. For example, they may want to seek legal counsel on the following issues:

- Whether the 20% local food procurement target law directs or justifies an instate-sourcing requirement for prime contracts, such as those with exclusive or near exclusive distributors;
- What other types of technical criteria can be used in evaluating the “quality” of foods, based on general bid selection criteria, and whether those criteria can be used as prerequisite minimum bidding requirements;
- Whether a price preference beyond the “price disadvantage” discussed above can be factored into their bid selection rubric;
- Whether their current contracts limit them from purchasing “off-contract” and, if so, which ones and to what extent;
- Whether contracting PSEs should use non-competitive bidding flexibilities to purchase off-contract whenever practical to achieve the 20% in-state food procurement goal; and
- What language might be inserted into future contracts to provide greater “off-contract” purchasing, if necessary?

Guidance on these issues may also be informative for the development of administrative rules, including those discussed above.

Create Communities of Practice

It may also be helpful to create communities of practice to foster collaboration and gain and share insights on how to improve contracting and purchasing processes to support local food procurement.³⁹ Collaborating with groups outside your state or locality may help to foster ideas and provide examples of new approaches that have been tested elsewhere. Likewise, collaboration across PSEs within a state or locality can also be valuable for building buy-in and reevaluating longstanding purchasing and contracting practices.⁴⁰

III. VENDOR SELECTION AND CONTRACT DRAFTING

By carefully scoping solicitations to attract bidders willing and capable of supporting local food initiatives and negotiating contract terms that prioritize local sourcing, contracting PSEs can enhance procurement staff's ability to procure locally produced foods. This section explores a few of the approaches that contracting PSE teams can consider to optimize vendor selection and contract drafting to meet local food procurement targets. Besides identifying distributors and other vendors most qualified to align offerings with local food procurement targets, these approaches can clearly signal a commitment on the part of the contracting PSE to work toward those targets.

Use Local-Sourcing-Related Technical Specifications to Qualify Bidders

Before issuing an RFP or other bid solicitation document,⁴¹ the contracting PSE must develop an evaluation methodology to identify the best proposal.⁴² Depending on the applicable legal landscape, RFPs and similar solicitation documents may be structured to prioritize the “value” of local foods in the bidding process.⁴³

While there are various possible approaches, the options of setting minimum bidding requirements and specifying selection rubric criteria that encourage or require local sourcing-related standards are discussed below. These may be useful strategies in instances where state agencies rely on a prime contract for all or a large percentage of their food purchases by ensuring supply diversity within a single contract. However, the same strategies may also be advantageous when working with a broader mix of vendors to ensure the entire portfolio of suppliers is aligned with the state's procurement goals. In either case, for purposes of transparency, the specifications indicated in the bids should be the same as the evaluation criteria used to select bids.⁴⁴ Some technical specifications that may be used to formulate “minimum bidding requirements” or “selection rubric criteria,” include the categories listed below.

Percentage of Foods to be Sourced Locally

An RFP can specify a minimum percentage of foods that must be sourced locally or require bidders to document what percentage of their sourcing is local. For example, a 2021 District of Columbia Child Nutrition Programs RFP asked bidders to provide certification of the percentage of locally grown or raised foods that would be supplied by the bidder and reserved the right to audit the actual percentage used after the bid was awarded.⁴⁵

Documentation or Certification to Verify Local Sourcing

To verify that the foods are sourced locally, the RFP might require bidders to provide documentation or certification. Forms of documentation that contracting PSEs may deem acceptable include farm identification numbers or a certificates of origin that verify the farm's location and the products it produces;⁴⁶ third party certifications such as those from local food organizations or agricultural boards;⁴⁷ or invoices or receipts from local suppliers that clearly indicate the origin of the products.

Sourcing Pledges

Bidders can be asked to submit a formal pledge or commitment to source a specified percentage of their products locally. Such pledges may, for example, require bidders to outline their strategies for helping the PSE or collective group of PSEs (in the case of a group contract) to achieve local procurement targets, including partnerships with local farmers, investment in local supply chains, and any planned initiatives to increase local procurement.

Locally Sourced Designations

Vendors can be required to designate foods from in-state producers in the product catalog and order sheets. This is a practice that at least some food distributors are already accustomed to doing.⁴⁸ For example, per 2020 bid award documents, the state of New York required distributors to designate New York State Food Products.⁴⁹

For contracting PSEs that want to transition from an exclusive or near-exclusive distributor relationship to work with a variety of vendors, origin labeling information allows them to determine which products to order from which vendors. For those contracting PSEs that face sourcing constraints that limit their ability to avoid contracting with exclusive or near-exclusive distributors, they might consider pairing this strategy with the option discussed below regarding [flexible off-contract purchase allowances](#) so that terms are clear as to when they can exercise small purchase or other similar flexibilities outside of the standard contracting processes.

Source Reporting

Source reporting is another technical specification that can support local sourcing goals. Requiring this complementary reporting takes the burden off the contracting PSE and provides it with information for evaluating compliance with local sourcing goals.



For example, in a recent RFP for food services for its city jail, the **City of Denver** stated its “goal to acquire at least twenty-five percent (25%) of food purchased through its supply chain from sources that are grown or processed entirely within Colorado, by 2030” and stipulated that the awarded vendor must provide the city with an annual “Local Sourcing Report.”⁵⁰



Similarly, a 2019 **Alameda County, California**, RFP specified that the selected vendor must develop and track metrics that measure and evaluate the amount of produce purchased from local (within 250 miles) vs. non-local farms, by case.⁵¹

Minimum Bidding Requirements

One method for identifying qualified bidders is to establish minimum bidding requirements, which may be based on the types of technical specification discussed in the section above. Such minimum bidding requirements are framed as mandatory technical requirements that must be satisfied before other evaluation criteria are considered and automatically disqualify unqualified bidders from the bidding process.⁵²



For example, in a 2024 invitation for bids, the **Maryland State Department of Education** specified the following as minimum requirements for bidding: (1) experience working with producers in Maryland and adjacent states; and (2) a food availability list with offerings limited to unprocessed or minimally processed items and grown and/or produced within 400 miles of delivery location.⁵³

In addition to creating clear selection criteria, minimum bidding requirements can also be used to clearly communicate a commitment on the part of the contracting PSE to source locally. See [draft minimum bidding requirement language](#) for consideration in the Appendix of this guide.

While PSEs may have legitimate concerns that these types of bidding requirements could limit the number of responsive proposals, it is important to note that it is not unprecedented for contracting PSEs to ask vendors to prioritize local foods. For example, as reported by Farm to Institution New England, Sodexo has worked with state officials and made several commitments to support the Vermont food system pursuant to its “Vermont First” initiative.⁵⁴ While that initiative is within the FSMC context, rather than the food distributor context, similar strategies can also be applied to broadline distributors.

Moreover, contracting PSEs can consider permissible options for collectively bargaining with other PSEs to increase their buying power and attract more vendors. To encourage similar practices among other PSEs in the region, they might also consider educational efforts and information sharing. Finally, PSEs can consider price only after local sourcing capability is considered. This may allow for consideration of bids that do not specifically meet local sourcing requirements only when other vendors that can meet those requirements have not been identified.⁵⁵

Selection Rubric Criteria

Local-sourcing-related technical criteria can also be used in a general bid selection rubric, instead of as a minimum bidding requirement. While potentially less impactful than minimum bid requirements, this is another approach that can identify qualified bidders best poised to align their sourcing with local food procurement target laws and signal the importance of local procurement in the solicitation documents.

For example, a 2023 RFP from Alameda County for juvenile facility food services incorporates the Good Food Purchasing Program (GFPP) standards as a key criterion for selecting vendors. GFPP standards emphasize, among other things, a preference for vendors who source food locally, supporting regional farmers and businesses. Vendors are scored based on their ability to meet these standards. The possible point value available for GFPP alignment (15 points out of a maximum total of 100) is the same as the possible point value available for demonstrating low pricing.⁵⁶ The RFP is a solicitation for a comprehensive food service management contract, though the same approach could be used in an RFP for food distributors or other food vendors. Likewise, while local food sourcing is just one of the GFPP standards, a similar rubric could be used to provide greater emphasis on local sourcing.

Contracting PSEs may have leeway to establish these types of bid selection criteria by relying on existing procurement target laws to justify their use. As discussed above, consulting with legal counsel to understand existing flexibilities to implement these types of tactics is important.

Consider Specifying Flexible Contract Terms

When aiming to increase local food procurement, PSEs should incorporate flexibility into their contracts with food distributors. This flexibility can help PSEs, including those that purchase through group contracts, adapt to the dynamic nature of local food availability and procurement needs. By specifying flexible contract terms, PSEs can better align their purchasing practices with local food sourcing goals, ensuring they can take advantage of local food options as they become available.

Non-Exclusivity and No-Minimum Order Clauses

Contracting PSEs should keep in mind that contracts may not need to be exclusive or require any specific food purchase threshold. A [draft non-exclusivity and no minimum order clause](#) is included in the Appendix.



For example, bid selection documents for 2020 contracts between food distributors and the **State of New York**, made clear that “no specific quantities are represented or guaranteed, and the State provides no guarantee of individual Authorized User participation... Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner.” It went on to add that the contracts “may be non-exclusive.”⁵⁷

Off-Contract Clauses

Where limited vendor availability or other market circumstances may give distributors power to demand an exclusive or near-exclusive distributor contract, contracting PSEs may also consider contract provisions that allow the PSE, or group of PSEs they are contracting on behalf of, the flexibility to go “off contract” to increase local food purchasing. To do this, contracting PSEs may consider drafting solicitation documents and contract terms that specify a meaningful percentage of off-contract purchase allowances to allow for local food purchases and be willing to negotiate for a broader allowance than the FSMC or distributor’s standard practices may allow. To help identify when off-contract purchases may be desirable, contracting PSEs can consider drafting solicitation documents and contract terms that specify that the FSMC or distributor must designate local food options within their product catalog or other listing of choices.

PSEs should work with their legal counsel to understand when these provisions are necessary or desired. In some cases, inserting an off-contract clause into a contract that is not otherwise drafted to be exclusive may imply an exclusive relationship, or at least create unnecessary ambiguity. In these instances, rather than insisting on such clauses, a better approach may be for counsel to provide guidance to the contracting PSEs’ procurement staff on how to leverage small-purchase threshold and other non-competitive bidding flexibilities to purchase from other suppliers when optimal.

Contracting PSEs that contract on behalf of a group of PSEs should also work with counsel to provide guidance to group members on flexibility for purchasing outside of the group contract.

IV. CONCLUSION

Optimizing food distributor contracts to achieve local food procurement targets requires a comprehensive approach that includes gaining background legal knowledge and other context. When contracting PSEs engage in the important work of aligning their solicitation and contracting process with their state's local food procurement targets, they should also practice ongoing monitoring and collaboration with vendors to assess and ensure the vendor's actual practices meet with the stated contract terms.

One resource that provides guidance on working with distributors and other vendors to support compliance with local-food related contract terms is the CDC's Food Service Guidelines Toolkit, included in the [Additional Resources](#) section on the next page. The resource includes a link to language that can be directly inserted into contracts to specify how monitoring and assessment will occur and designates who will be responsible for carrying out compliance and progress monitoring.

By working with legal counsel and considering the strategies discussed above, state and local public sector entities can create robust, flexible contracts that meet their local food sourcing goals or mandates.



V. APPENDIX

Additional Resources

- Center for Agriculture and Food Systems at Vermont Law School, [Defining Local Food: An Analysis of State Approaches and Challenges](#) (2021)
- Centers for Disease Control and Prevention, [Food Service Guidelines Toolkit](#) (2017)
- Center for Good Food Purchasing, [Solicitations Toolkit](#) (2022)
- Center for Science in the Public Interest, [Healthy Values-Aligned Government Food Purchasing and Service Toolkit for Advocates](#) (2024)
- Farm to Institution New England, [A Toolkit for Institutional Purchasers Sourcing Local Food From Distributors](#) (2013) *This resource may also have applicability outside of New England. The focus is on contracts with distributors.*
- Farm to Institution New England, [Food Service Management Companies in New England: A Report on the State of the Industry](#) (2020) *Many of the observations and suggestions in this resource will be of value to those wishing to understand the complexities of public and other sector contracting with food service management companies, even outside of New England.*
- Farm to Institution New England, [Guide: Leveraging Contracts for Local Food](#) (2021) *As with the other Farm to Institution resource listed just above, this resource is designed for institutions that work with food service management companies, but much of the information may be applicable to other contract scenarios, including outside of New England.*
- Farm to Institution New England, [Regional Trends in New England Farm to Institution Procurement Policy](#) (2020)
- Food Chain Workers Alliance & HEAL Food Alliance, [Procuring Food Justice: Grass Roots Solutions for Reclaiming Our Public Supply Chains](#) (2023)
- Laura Edwards-Orr, The Center for Good Food Purchasing, [Good Food Purchasing Program Standards, Resources, and Best Practices Toolkit](#) (2023)
- National Association of State Procurement Officials (NASPO) [State Preference Repository](#) catalogs state bidding preferences, including in-state/local bidders, and locally-produced/manufactured commodities.
- National Association of State Procurement Officials, [Responsiveness vs. Responsibility Fact Sheet](#) (2024)
- NIGP: The Institute for Public Procurement, [Request for Proposals: Global Best Practices](#) (2020)
- Taber Ward & Blake Angelo, [A 50-State Policy Scan on the Role of State Procurement Policy on Buying Colorado Food](#), Colo. Food Sys. Advisory Council Issue Brief (2021) *This resource has broad applicability outside of Colorado and includes an excellent summary of financial support and bidding preference legislative strategies, along with examples of states that have implemented them.*

Example State Policies that Establish Targets for Local Food Procurement

STATE	LAW	KEY LANGUAGE
Arkansas	Ark. Code Ann. § 15-4-3804	"For each fiscal year, each agency shall make it a goal to ensure that at least twenty percent (20%) of the agency's purchases of food products is spent on local farm or food products."
California	Cal. Food & Agr. Code § 58595	"A California state-owned or state-run institution that purchases agricultural food products shall implement necessary practices to achieve a goal of ensuring that at least 60 percent of the agricultural food products that it purchases in a calendar year are grown or produced in the state by December 31, 2025."
Hawaii	Haw. Rev. Stat. Ann. § 27-8	<p>"The department of education, department of health, department of corrections and rehabilitation, department of defense, and University of Hawaii system shall each ensure that a certain percentage of the food purchased for public schools, youth campuses, public hospitals, public prisons, and any purchases made directly by the University of Hawaii for use in its academic programs, as applicable, is fresh local agricultural products and local value-added, processed, agricultural, or food products, as follows:</p> <p>(1) By January 1, 2025, fresh local agricultural products and local value-added, processed, agricultural, or food products shall constitute a minimum of ten per cent of the total food purchased during each calendar year, as measured by the per cent of total food cost;</p> <p>(2) By January 1, 2030 [they] shall constitute a minimum of eighteen per cent [of such purchases];</p> <p>(3) By January 1, 2035 [they] shall constitute a minimum of twenty-six per cent [of such purchases];</p> <p>(4) By January 1, 2040 [they] shall constitute a minimum of thirty-four per cent [of such purchases];</p> <p>(5) By January 1, 2045 [they] shall constitute a minimum of forty-two per cent [of such purchases];</p> <p>(6) By January 1, 2050 [they] shall constitute a minimum of fifty per cent [of such purchases]."</p>
Hawaii	Haw. Rev. Stat. Ann. § 302A-405.6	"By 2030, the department [of education] shall meet the local farm to school meal goal that thirty per cent of food served in public schools shall consist of locally sourced products, as measured by the percentage of the total cost of food."

STATE	LAW	KEY LANGUAGE
Illinois	<u>30 Il. Comp. Stat. Ann. 595/10</u>	<p>“(a)...[I]t shall be the goal of this State that 20% of all food and food products purchased by State agencies and State-owned facilities, including, without limitation, facilities for persons with mental health and developmental disabilities, correctional facilities, and public universities, shall, by 2020, be local farm or food products.</p> <p>(b) The State shall support and encourage that 10% of food and food products purchased by entities funded in part or in whole by State dollars, which spend more than \$25,000 per year on food or food products for its students, residents, or clients, including, without limitation, public schools, child care facilities, after-school programs, and hospitals, shall, by 2020, be local farm or food products.”</p>
Maine	<u>Me. Rev. Stat. Ann. tit. 7, § 214-A</u>	<p>“[T]he 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.”</p>
Maryland	<u>Md. State Finance and Procurement Code Ann. § 14-703</u>	<p>“Each unit shall structure procurement procedures, consistent with the purposes of this subtitle, to try to achieve an overall percentage goal of 20% of the unit’s total dollar value of procurement contracts for food being made directly or indirectly to certified local farms and certified Chesapeake invasive species providers.”</p>
Maryland	<u>Md. State Finance and Procurement Code Ann. § 14-702</u>	<p>“(b)(1) There is a Certified Local Farm and Fish Program in the Office.</p> <p>(2) The purpose of the Program is to encourage each unit to try to achieve an overall percentage goal of 20% of the unit’s total dollar value of procurement contracts for food from certified local farms and certified Chesapeake invasive species providers.”</p>
Missouri	<u>Mo. Rev. Stat. § 262.960</u>	<p>“There is hereby created within the department of agriculture the “Farm-to-Table Program...The department shall establish guidelines for voluntary participation and parameters for program goals, which shall include, but not be limited to, participating institutions purchasing at least ten percent of their food products locally by December 31, 2019.”</p>

STATE	LAW	KEY LANGUAGE
New York	<u>N.Y. Exec. Order No. 32, Establishing State Agency Food Purchasing Goals for New York State Agricultural Products (2023)</u>	"To the extent that State Agencies purchase food or food products, including through contracted services: (a) effective immediately, such State Agencies shall specify the purchase of New York State Food Products whenever feasible; and attempt to increase purchasing as follows, (b)(i) on or before the end of 2023, 5 percent of such State Agency's food or food product purchases shall be New York State Food Products; (ii) on or before the end of 2024, 15 percent of such State Agency's food or food product purchases shall be New York State Food Products; (iii) on or before the end of 2025, 20 percent of such State Agency's food or food product purchases shall be New York State Food Products; (iv) on or before the end of 2026, 25 percent of such State Agency's food or food product purchases shall be New York State Food Products; and (v) on or before the end of 2027, 30 percent of such State Agency's food or food product purchases shall be New York State Food Products."
Rhode Island	<u>R.I. Gen. Laws § 16-111-4</u>	"It shall be the policy of the state, the department of education, and any educational entity to encourage that any request for proposal (RFP) to a food service company (vendor) to provide food services to an educational entity encourage the use of a vendor that purchases ten percent (10%) of the required food service product from a Rhode Island-based food service company."
Vermont	<u>16 V.S.A. § 1264a</u>	"It is a goal of the State that by the year 2023, at least 20 percent of all foods purchased by eligible entities, as defined by subsection (e) of this section, be locally produced foods."
Vermont	<u>6 V.S.A. § 4719</u>	<p>"It is the goal of the Farm-to-School Program to establish a food system that by 2025:</p> <p>(1) engages 75 percent of Vermont schools in an integrated food system education program that incorporates community-based learning; and</p> <p>(2) purchases 50 percent of food from local or regional food sources."</p>
West Virginia	<u>W. Va. Code § 19-37-2</u>	"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."

Hypothetical Example: Contract Review

A state has a new law that specifies that 25% of all food procured by state institutions must be grown or manufactured in the state (“the State’s local food procurement target”). Currently, the State’s Department of Administration (“the Contracting PSE”) is working to align food procurement for various hospitals, residential care facilities, and carceral facilities with that mandatory target. The Contracting PSE has two group contracts with one food distributor to supply food for those institutions and other facilities. One contract is for fresh produce (“the Produce Contract”). The other is a broadline contract for other foods (“the Broadline Contract”). Facilities can place orders directly with the distributor through either contract. Occasionally, individual facilities also order through other suppliers using a small purchase threshold flexibility, which generally enables them to make purchases of up to \$10,000 without going through the state’s formal contracting processes. However, procurement staff at most facilities are reluctant to do so. Among other things, they are unsure how to use this flexibility without violating the terms of the Produce and Broadline Contracts.

The Produce Contract contains, among other provisions, these two clauses:

Off-Contract Items: Should any facility have requirements during the term of the contract for produce products that are not listed in the contract, the contractor may be asked to provide a quote to furnish and deliver such products in accordance with contract terms. Facilities will be allowed to purchase these items from other vendors, but only if the contractor declines to supply the same or if the price available from another vendor is more competitive.

Alterations: The State reserves the right to change the scope of work for providing articles specified by this agreement, or to change delivery dates without invalidating this Agreement. Such alterations shall be made in writing. If any such alterations are made, the contract amount shall be adjusted accordingly. In no event shall the contractor fail or refuse to continue the performance of the work of providing articles under this Agreement because of the inability of the parties to agree on the amount of the adjustment.

The Broad Line Contract contains a similar “alteration” clause but does not include an “off-contract items” clause. Neither contract specifies a minimum contract order amount or even a total contract amount (even though there is a reference to a “contract amount” in the alternations clauses). However, both contracts indicate that orders will typically be placed once or twice per week at some facilities. The contracts are set to expire in two years, and the Contracting PSE is interested in exploring what options may exist during the contract period to increase purchases of in-state products.

Here, the contracting PSE might consider requesting the distributor to designate which of its offerings are produced or manufactured in the state. If the distributor is willing to do so, but the offerings do not allow institutions to align purchases with the State’s local food procurement target and the distributor is unable or unwilling to make suitable adjustments, the Contracting PSE may wish to request a guidance memo from counsel to understand the effect of the above clauses within the context of the broader contract and other legal requirements. Depending on what is learned, the Contracting PSE can use this information to consider potential adjustments to its purchasing practices during the current contracting period. It may also identify where it may want to negotiate additional flexibility in the current contract or any future contracts that it may wish to enter into with the distributor.

For example, depending on the broader context, counsel might determine that under the Produce Contract it is permissible for facilities to procure some produce items through another vendor without needing to rely on the “off-contract items” clause, by exercising the “alterations” clause. Counsel might also find that the absence of the “off-contract items” clause in the Broad Line Contract opens the possibility of ordering through other sources even without needing to exercise the “alterations” clause.

Conversely, to the extent counsel determines that the contracts are largely inflexible, the Contracting PSE may, for example, wish to explore eliminating the “Non-Contract Items” clause in any future versions of the Produce contract by negotiating for a clearly non-exclusive contract. If that is not feasible, it might also negotiate language in the “Non-Contract Items” clause that reflects the value the state is placing on in-state purchases. Sample language for such a clause is included in the Appendix (see Example Off-Contract Clause.)

Example Documents and Draft Clauses that Emphasize Local Food Sourcing in Food Vendor Contracts and RFPs

This section includes draft clauses for contracts and solicitation documents; and actual documents that have been published by various prospective contracting PSEs to solicit information from prospective vendors for food-related services.

The example documents are not necessarily specific to distributors, but with appropriate modification, they may provide example approaches for contracting with distributors. The draft clauses are based on actual contract and/or solicitation documents or models, but have been modified, as necessary, including to make them nonspecific to a particular PSE. Contracting PSEs may use them as starting points when crafting contract and RFP language, but final language should be reviewed by legal counsel to ensure it has the intended meaning within the context of the document where the text is integrated.

Example Requests for Information

- Washington Office of Superintendent of Public Instruction, [Request for Information: Local Food for Schools Cooperative Agreements](#) (July 2023)
- District of Columbia, Office of the Deputy Mayor for Planning and Economic Development, [Request for Information \(RFI\) HID DCEB-2022-I-0002](#) (2022).
- Lars Benson et al., Harvard Kennedy School Government Performance Lab, [Request for Information \(RFI\) Template](#) (2022)

Example RFPs with Evaluation Criteria that Emphasize Local Food Sourcing in Food Contracts

- Los Angeles Unified School District, [Request for Proposal No. 2000001469 For Strategically Sourced Refrigerated \(Direct Delivery\) Meal Kits and Frozen Vegan and Miscellaneous Items](#) (Mar. 7, 2018)
 - Points-based evaluation criteria are listed starting on p 15. Vendors may earn up to 55 of 210 total possible points based on the price of the proposal. Meanwhile up to 45 points may be earned for a demonstrated a commitment to “Good Food Purchasing Pledge.” Of those 45 points, up to six may be earned for a current commitment to sourcing locally grown or locally raised agricultural products, with up to three points for a future commitment. Other non-price-related factors such as taste/quality/formulation (up to 25 points) are also included in the criteria. While the Good Food Purchasing Pledge is broader than a commitment to local sourcing, the RFP demonstrates how values-based criteria and other preferences can be prioritized as a significant percentage of points-based award criteria.
- Alameda County, California, [General Services Agency Juvenile Facility Food Services RFP No. 902215](#) (Dec. 23, 2022)
 - Like the Los Angeles example, above, this RFP also uses GFPP standards in its points matrix, allowing up to 15 point each for GFPP alignment and cost, out of a maximum of 100 points.
- Metropolitan Area Planning Council, [RFP #NE, Procurement of New England/Northeastern Regional Produce from Regional Food Aggregators](#), 2023
- See also, Feed BC, [Tips and Tools for Integrating Local Food in RFx for Food Services](#), B.C. Ministry of Agriculture and Food (2022). That document was created for post-secondary institutional procurement teams in British Columbia, Canada, but it includes information that may be adapted for procurement in the United States.

Example Scoring Rubrics

- An [editable spreadsheet rubric](#) that contemplates various values-based criteria is linked in this resource: Vern Grubinger, Editable Spreadsheet Rubric, Univ. of Vt. Extension (Dec. 16, 2022), linked in Vern Grubinger, [A Decision Tool for Values-Based Food Purchasing](#), Univ. of Vt. Extension (Dec. 16, 2022).
- U.S. Dep’t of Agric., [Geographic Preference: What It Is and How to Use It](#) (2011) (three models for rubrics with geographic preference are included in this resource).

Draft Minimum Qualifications Clause

1. The Bidder must document in its Bid that it satisfies the following Minimum Qualifications:
 - a. The Bidder shall have demonstrated relationships with producers in [State] and adjacent states (within [X] miles of delivery destinations) from whom products may be sourced for food service under the final Agreement
 - (1.) Required Documentation: As proof of meeting this requirement, the Bidder shall provide with its Bid two (2) letters of recommendation from producers in [State] or adjacent states (within 400 miles of delivery destinations) evidencing this relationship.
 - b. At least 20% of available food offerings must be limited to unprocessed or minimally processed items and grown and/or produced within 400 miles of each delivery location.
 - (1.) Required Documentation: As proof of meeting this requirement, the Bidder shall provide with its Bid a sample product catalog(s) and pricing sheets that reflect the requirements for food in this RFP.

Source: This example is based on the Maryland State Department of Education's Request for Quote (RFQ) for Farm to School Food Hub Aggregation: Central Region (BPM046372), with some portions taken verbatim. The entire RFQ is available here: https://emma.maryland.gov/page.aspx/en/bpm/process_manage_extranet/74170; Permalink: <https://perma.cc/3JXG-3Y5A>

Draft Non-Exclusivity and No-Minimum Order Clause

1. **Non-Exclusivity:** This contract is non-exclusive. [Distributor] acknowledges that no specific quantities are represented or guaranteed, and [PSE] provides no guarantee of individual Authorized User participation.
2. **No-Minimum Order:** [PSE] is not obligated to purchase any minimum quantity of goods or services from [Contractor] Orders will be placed based on the needs of [PSE], and [Contractor] shall fulfill such orders as requested.

Source: This draft draws from language used in the 2020 contracting documents between food distributors and the state of New York available [here](#).

Draft Right to Purchase-Off Contract Clauses

- Draft A: It is the goal of [State] to utilize at least [x% of] locally grown products in its food services. [PSE] reserves the right to purchase products from other vendors if it determines that doing so would best accomplish these goals.

Source: Modified from the "Broadline Distributor RFP" example found in the Farm to Institution New England and Massachusetts Farm to School resource, Sample Language & Resources for Local FFEDs in Contracts & RFPs, available [here](#).

- Draft B: During the term of the contract, if the successful vendor is unable to supply any products or is providing products below required specifications, including by designating and certifying at least [x%] of its offering are products sourced from producers in [State], [PSE] reserves the right to purchase the items off contract

Source: Modified from Gwinnett County, Georgia, Invitation to Bid No. BL095-16, Purchase of Food Products on an Annual Contract (2016), available [here](#).

ENDNOTES

- 1 See, e.g., *Food Justice*, FOOD CHAIN WORKERS ALL. & HEAL FOOD ALL., <https://procuringfoodjustice.org/> (last visited Nov. 7, 2024); *Food Service Management Companies in New England: A Report on the State of the Industry*, FINE FARM TO INST. NEW ENGLAND (2015) https://www.farmtoinstitution.org/sites/default/files/imce/uploads/Report_FSMCs%20in%20New%20England.pdf (last visited Nov. 7, 2024); Keri Blakinger, ‘Pig Slop’ No More? Texas Prisons Detail Plan to Improve Food, THE MARSHALL PROJECT (Jan. 20, 2023, 6:00 AM), <https://www.themarshallproject.org/2023/01/20/pig-slop-no-more-texas-prisons-detail-plan-to-improve-food> (reporting that in fiscal year 2023, Texas alone spent approximately \$100 million on food procurement just for its prison system).
- 2 See *Equitable Development Toolkit 2020–2023*, POLICYLINK (Feb. 15, 2018), <https://www.policylink.org/resources-tools/edtk>; see also *Equitable Community Engagement Toolkit*, BOS. PUB. HEALTH COMM’N, https://imagine.boston.gov/sites/default/files/file/2021/03/BPHC%20Community%20Engagement%20Toolkit%202_Final.pdf (last visited Nov. 8, 2024).
- 3 See, e.g., *Equitable Development Toolkit Local Food Procurement*, POLICYLINK (2015), https://www.policylink.org/sites/default/files/edtk_local-food-procurement.pdf; A 50-State Policy Scan on the Role of State Procurement Policy, COLO. FOOD SYS. ADVISORY COUNCIL, https://cofoodsystems council.org/wp-content/uploads/2021/08/InstitutionalProcurement_Brief_8-20-21.pdf (last updated June 10, 2021); A Toolkit for Institutional Purchasers Sourcing Local Food From Distributors, FINE FARM TO INST. NEW ENGLAND, <https://docs.google.com/file/d/0B-0DrIMRIE-LMTdCLWVOaE4wLVU/edit?sourcekey=0-I44k67nljJvIRLCaM-Ouw> (last visited Nov. 8, 2024).

Claire Kelloway & Matthew Jinoo Buck, *Kickbacks and Corporate Concentration: How Exclusionary Discounts Limit Market Access for Community-Based Food Businesses*, YALE L. & POL’Y REV. (Dec. 30, 2023); https://yalelawandpolicy.org/inter_alia/kickbacks-and-corporate-concentration-how-exclusionary-discounts-limit-market-access.
- 4 See 36 M.R.S. § 6602(1)–(2). The importance of legislative strategies and executive orders is not underestimated here, but it is not the focus. Readers interested in learning more about these strategies may wish to review resources such as “A 50-State Policy Scan on the Role of State Procurement Policy on Buying Colorado Food” and “Regional Trends in New England Farm to Institution Procurement Policy.” Both of those resources contain information that is applicable in broader geographic contexts than their titles may imply and are later discussed. See *infra* Additional Resources.
- 5 See *infra* Additional Resources.
- 6 *Leveraging Contracts for Local Food: A Guide for Institutions That Work with Food Service Management Companies*, FINE FARM TO INST. NEW ENGLAND (2015), https://www.farmtoinstitution.org/sites/default/files/imce/uploads/Guide_Leveraging%20Contracts%20for%20Local%20Food.pdf.
- 7 *Id.*
- 8 See *What Does a Food Distributor Do?*, CAROLINA FOOD SERV. (Sept. 20, 2022), <https://carolinafoodservice.com/blog/what-does-a-food-distributor-do>; see also *Wholesaling*, U.S. DEP’T OF AGRIC., ECON. RSCH. SERV., <https://www.ers.usda.gov/topics/food-markets-prices/retailing-wholesaling/wholesaling/> (last visited Nov. 8, 2024); see also *Food Hubs*, HEALTHY FOOD ACCESS PORTAL, <https://healthyfoodaccess.org/business-models/food-hubs/?destination=node%2F321#:~:text=As%20defined%20by%20the%20National,Hybrid%20model> (last visited Nov. 8, 2024).
- 9 See, e.g., *Food Service Management Companies in New England: Phase 1 Research Findings: Barriers & Opportunities for Local Food Procurement*, FINE FARM TO INST. NEW ENGLAND (2015), https://www.farmtoinstitution.org/sites/default/files/imce/uploads/Report_FSMCs%20in%20New%20England.pdf; *Distinguishing an FSMC from a Vendor*, CAL. DEP’T OF EDUC. (2018), <https://www.cde.ca.gov/ls/nu/sn/mbsnp092018.asp#:~:text=Food%20Service%20Management%20Companies,-To%20aid%20SFAs&text=Assume%20duties%20typically%20performed%20by,student%20eligibility%20data%20for%20meals>.
- 10 See *supra* note 6.
- 11 *Public Procurement Practice*, PRINCIPLES & PRACS. OF PUB. PROCUREMENT, <https://www.nigp.org/resource/global-best-practices/request-for-proposals-global-best-practice.pdf?dl=true> (last visited Nov. 8, 2024).
- 12 *Invitation for Bid (IFB) v. Request for Proposal (RFP)*, ILL. STATE BD. OF EDUC. <https://www.isbe.net/Documents/Invitation-Bid-Req-Proposal.pdf> (last visited Nov. 8, 2024).
- 13 See *supra* note 6.

- 14 See, e.g., CTR. FOR GOOD FOOD PURCHASING, *Good Food Purchasing Program Standards, Resources, and Best Practices Toolkit* (2023), https://www.spur.org/sites/default/files/2023-10/SPUR_Overview_Good_Food_Purchasing_Toolkit.pdf; *Food Service Management Companies in New England: Phase 1 Research Findings: Barriers & Opportunities for Local Food Procurement*, FINE FARM TO INST. NEW ENGLAND (2015), https://www.farmtoinstitution.org/sites/default/files/imce/uploads/Report_FSMCs%20in%20New%20England.pdf.
- 15 Sarah Elliot et al., *Solicitations Toolkit: How to Develop Successful Values-Driven Solicitations*, CTR. FOR GOOD FOOD PURCHASING (2022), <https://drive.google.com/file/d/14VTapauCFdCLbHepziQGyS4IB6ekTsTI/view>.
- 16 See, e.g., *Food Service Management Companies in New England: Phase 1 Research Findings: Barriers & Opportunities for Local Food Procurement*, FINE FARM TO INST. NEW ENGLAND (2015), https://www.farmtoinstitution.org/sites/default/files/imce/uploads/Report_FSMCs%20in%20New%20England.pdf; *Distinguishing an FSMC from a Vendor*, CAL. DEP'T OF EDUC. (2018), <https://www.cde.ca.gov/ls/nu/sn/mbsnp092018.asp#:~:text=Food%20Service%20Management%20Companies,-To%20aid%20SFAs&text=Assume%20duties%20typically%20performed%20by,student%20eligibility%20data%20for%20meals>.
- 17 *Solicitation Methods*, NAT'L ASS'N OF STATE PROCUREMENT OFFS., https://cdn.naspo.org/R/ProcurementToolboxIssue4_SolicitationMethods.pdf (last visited Nov. 8, 2024).
- 18 *United Nations Procurement Division, Procurement Manual, Chapter 5: Sourcing, Section 5.4: Request for Information (RFI)*, UNITED NATIONS, <https://www.un.org/Depts/ptd/sites/www.un.org.Depts.ptd/files/files/attachment/page/pdf/pm.pdf> (last visited Nov. 8, 2024).
- 19 See, e.g., MINN. STAT. § 16C.06 (2017) (outlining requirements for state procurement).
- 20 See, e.g., NEW YORK CITY, N.Y. PROCUREMENT POL'Y BD. RULES, <https://www.nyc.gov/assets/mocs/downloads/Regulations/PPB/PPBRules.pdf>.
- 21 See, e.g., CAL. PUB. CONT. CODE § 10410 (2023); N.Y. STATE FIN. LAW § 165(3) (2023); 30 ILL. COMP. STAT. 575/1 (2023).
- 22 2 C.F.R. § 200 (2020).
- 23 Child Nutrition Programs: Meal Patterns Consistent With the 2020–2025 Dietary Guidelines for Americans, 89 Fed. Reg. 31963 (Apr. 25, 2024).
- 24 See *Procuring Food Justice*, FOOD CHAIN WORKERS ALL. (May 16, 2023), <https://foodchainworkers.org/2023/05/procuring-food-justice-read-our-new-report/>.
- 25 See *Local Food for Local Government: Considerations in Giving Preference to Locally Grown Food*, https://www.changelabsolutions.org/sites/default/files/documents/Local_Food_Guide_FINAL_20120328.pdf (last visited Nov. 8, 2024). Note this resource does not generally contemplate scenarios where technical specifications dictate factors beyond price for food goods, but as noted above, most state laws do allow for technical specification beyond price.
- 26 CAL. PUB. CONT. CODE § 10344 (2023).
- 27 SEE, E.G., TEX. GOV'T CODE ANN. § 2155.074 (2023).
- 28 TEX. LOC. GOV'T CODE § 252.043 (2013).
- 29 See *infra* Appendix (noting “Example State Policies that Establish targets for Local Food Procurement”).
- 30 See *Local Food for Local Government: Considerations in Giving Preference to Locally Grown Food*, https://www.changelabsolutions.org/sites/default/files/documents/Local_Food_Guide_FINAL_20120328.pdf (last visited Nov. 8, 2024). Where local preferences apply, when an agency opens the bids, generally “it first considers whether the bids meet the specifications for responsiveness of the bid (for quality and quantity of food, for example), then ranks the bids according to price. If more than one bid is the lowest ranked bid and one is within the geographic preference region, the state or locally grown bid wins.” *Id.*
- 31 *A 50-State Policy Scan on the Role of State Procurement Policy*, COLO. FOOD SYS. ADVISORY COUNCIL, https://cofoodsystem-scouncil.org/wp-content/uploads/2021/08/InstitutionalProcurement_Brief_8-20-21.pdf (last updated June 10, 2021).
- 32 30 ILL. COMP. STAT. 595/10 (2023).
- 33 See, e.g., MINN. STAT. § 471.345 (2024).
- 34 WYO. STAT. ANN. § 9-2-3204(b)(iv) (2024).
- 35 Me. Pub. L. 2019, ch. 677.
- 36 7 M.R.S. § 214-A (2020).

- 37 *Id.* § 215A (2020).
- 38 Me. Rev. Stat. tit. 5, § 1825-B (2024).
- 39 See, e.g., Center for Science in the Public Interest, Healthy Values-Aligned Government Food Purchasing and Service Toolkit for Advocates, <https://www.cspinet.org/page/healthy-values-aligned-government-food-purchasing-and-service-toolkit-advocates>.
- 40 Nov. 27, 2024 notes shared with the Healthy Food Policy Project by Sarah Blau, MPH, Public Health Promotion Specialist, Division of Community, Health and Equity, Rhode Island Department of Health.]
- 41 Other bid solicitation formats include, for example, an invitation for bid (IFB). See Invitation for Bid (IFB) v. Request for Proposal (RFP), *Ill. State Bd. of Educ.*, <https://www.isbe.net/Documents/Invitation-Bid-Req-Proposal.pdf> (last visited Nov. 8, 2024).
- 42 See *Public Procurement Practice*, PRINCIPLES & PRACS. OF PUB. PROCUREMENT, <https://www.nigp.org/resource/global-best-practices/request-for-proposals-global-best-practice.pdf?dl=true> (last visited Nov. 8, 2024).
- 43 See *Sustainable Local Procurement*, FAO, https://www.fao.org/fileadmin/user_upload/nr/sustainability_pathways/docs/SustainableLocalProcurement_Factsheet_ENGLISH.pdf (last visited Nov. 8, 2024) (outlining some of the value of procuring locally sourced foods).
- 44 See *Best Practices Review: Contracting and Procurement in Public Entities*, MINN. OFF. OF THE STATE AUDITOR (Nov. 15, 2005), https://www.osa.state.mn.us/media/z3wggecu/bestpractices_05_report.pdf.
- 45 *Request for Proposals (RFP) – Food Service Management*, D.C. CHILD NUTRITION PROGRAMS, <https://www.learncharter.org/app/uploads/2021/10/LEARN-DC-NSLP-FSMC-RFP.pdf> (last visited Nov. 8, 2024). Note this RFP was for FSMC services, but the approach may be adapted to RFPs for food distributors.
- 46 See, e.g., Taylor Stinchfield, *What is a Farm Number? Why is it So Important for USDA Funding*, FARMRAISE (Nov. 6, 2024), <https://www.farmraise.com/blog/a-farm-number-what-is-it-and-why-is-it-important>.
- 47 See, e.g., Alex Hill, *Certified naturally grown*, CERTIFIED NATURALLY GROWN (June 2, 2020), <https://www.naturallygrown.org/certified-naturally-grown/#:~:text=The%20seal%20means%20that%20the,a%20third%2Dparty%20certification%20agency>.
- 48 See *Proposer Questionnaire – General Business Information*, US FOODS–NJPA, <https://info.omniapartners.com/hubfs/PUBLIC%20SECTOR/Supplier%20Information/US%20Foods/RFP%20Response-US%20Foods%20112917.pdf> (last visited Nov. 8, 2024).
- 49 *Revised Contract Award Notification*, N.Y. STATE OFF. OF GEN. SERVS., <https://online.ogs.ny.gov/purchase/spg/pdf-docs/0245023199ra.pdf> (last visited Nov. 8, 2024).
- 50 See *Request for Proposal No. 11052A2022: Food Services for City Jails*, DENVER DEP'T OF GEN. SERVS., <https://imlive.s3.amazonaws.com/Denver%20General%20Services%20Purchasing/ID149043474378758108233292980304000028605/RFP%2011052%20Food%20Services%20City%20Jails%20Final.pdf> (last visited Nov. 8, 2024).
- 51 See *Request for Proposal No. 901700 for Food Delivery Services*, CNTY. OF ALAMEDA DEP'T OF GEN. SERVS., https://www.acgov.org/gsaapp/purchasing/bidContent_ftprfpDocs/RFP%23901700.doc (last visited Nov. 8, 2024). This example is for food delivery services, but the approach may be modified for other contract types.
- 52 NIGP: The Institute for Public Procurement, *Request for Proposals: Global Best Practice* (2020), <https://www.nigp.org/resource/global-best-practices/request-for-proposals-global-best-practice.pdf?dl=true>.
- 53 See *Invitation for Bids, Farm to School Hub Aggregation Central Regions*, MD. STATE DEP'T OF EDUC. (Sept. 17, 2024). Note this was directed to food hubs, but the same concept might be applied in other types of food distributor contracts.
- 54 *Food Service Management Companies in New England: Phase 1 Research Findings: Barriers & Opportunities for Local Food Procurement*, FINE FARM TO INST. NEW ENGLAND (2015), https://www.farmtoinstitution.org/sites/default/files/imce/uploads/Report_FSMCs%20in%20New%20England.pdf.
- 55 *Model Language for Healthier School Food*, METRO. AREA PLAN. COUNCIL (2019), https://www.mapc.org/wp-content/uploads/2022/05/RFP-model-language_General_022619.pdf.
- 56 *Request for Proposal No. 902215 for Juvenile Facility Food Services*, CNTY. OF ALAMEDA DEP'T OF GEN. SERVS., https://www.acgov.org/gsaapp/purchasing/bidContent_ftprfpDocs/2643_902215RFPJuvenileFacilityFoodServices.docx (last visited Nov. 8, 2024).
- 57 *Model Language for Healthier School Food*, METRO. AREA PLAN. COUNCIL (2019), https://www.mapc.org/wp-content/uploads/2022/05/RFP-model-language_General_022619.pdf.