
LEVERAGING LOCAL PURCHASING POWER: REFORMING STATE LAWS TO SUPPORT MUNICIPAL VALUES-BASED FOOD PROCUREMENT

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Leveraging the enormous purchasing power of government to advance social, economic, and environmental objectives has a long history in the United States and abroad. Historically, public procurement was often used to enforce important societal objectives (e.g., limiting child work hours, enforcing anti-discrimination laws, promoting the hiring of woman and minority businesses). Since at least the 1970s, new “sustainable” or “green” public procurement efforts at all levels of government have also been utilized to support environmental and climate goals (e.g., buying recycled paper, limiting toxic chemicals in products, reducing greenhouse gas emissions). Over the last 15 years or so, a third wave of public procurement initiatives has emerged that focuses on tackling the significant adverse environmental, climate, public health, and other impacts of our global food and agricultural system. This article focuses primarily on this latest public procurement movement, which seeks to harness government purchasing dollars to buy food that is more sustainable, healthy, and equitable. More specifically, this piece analyzes new initiatives in the United States, largely at the municipal level, to advance public procurement laws and policies that are aligned with nutrition, local economy, environmental, labor, racial, animal welfare, and other so-called “values-based” or “good food” standards. With a spotlight on New York State, this article discusses how antiquated state laws—which largely govern government purchasing by cities and towns—have hindered local values-based food procurement efforts by generally requiring the awarding of public contracts to the “lowest responsible bidder.” It argues

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that to help fully realize the promise of local values-based food procurement in New York and most other jurisdictions, existing state procurement laws should be reformed to explicitly empower municipalities (via “best value” and price preference methods) to incorporate new “good food” standards in their purchasing decisions.

INTRODUCTION.....	333
I. BRIEF HISTORY OF VALUES-BASED PUBLIC PROCUREMENT	340
A. <i>Values-Based Public Procurement in the United States and Abroad</i>	341
B. <i>New York State Values-Based Public Procurement</i>	348
II. EMERGENCE OF VALUES-BASED FOOD PROCUREMENT	354
A. <i>International Food Public Procurement</i>	357
B. <i>United States Government Food Procurement</i>	359
C. <i>New York State Food Procurement</i>	365
D. <i>Municipal Efforts: Good Food Purchasing in Four Key U.S. Cities</i>	369
III. STATE PROCUREMENT LAW GOVERNING MUNICIPALITIES.....	383
A. <i>Lowest Responsible Bidder Standard</i>	384
B. <i>Best Value Procurement</i>	387
C. <i>State Authority for Local Values Based Food Purchasing</i>	391
1. California.....	392
2. Colorado	396
3. Illinois.....	398
4. Massachusetts	401
D. <i>N.Y.S. General Municipal Law</i>	403
1. <i>Lowest Bidder Procurement</i>	405
2. <i>Best Value Procurement</i>	407
3. <i>Exceptions to Lowest Bidder and Best Value Procurement</i>	416
IV. “GOOD FOOD” LEGISLATION IN NEW YORK	419
A. <i>Original 2022 “Good Food NY” Legislation</i>	420
B. <i>2023 Version: Local Economies Plus One Additional Value</i>	423
C. <i>2024 Version: Passes NYS Legislature but Is Vetoed by Governor Hochul</i>	425
D. <i>2025 Version: New York-Based Vendors Only and Best Value Option Added</i>	426
V. LEGAL AND POLICY ISSUES RELATED TO THE GOOD FOOD NY BILL	433
A. <i>The Dormant Commerce Clause and the Market Participant Exception</i>	433
1. <i>Local Governments & Municipalities Are “the State”</i>	437
2. <i>Participation or Regulation</i>	443

B. <i>Compliance with Federal Procurement Rules</i>	447
1. Full and Open Competition	448
2. Buy American Rule	450
3. Geographic Preference Rule.....	452
C. <i>Request for Proposals (“RFPs”) v. Bids</i>	455
D. <i>Federal and State Agricultural and Food Standards</i>	459
CONCLUSION	460

INTRODUCTION

There is a long history, both internationally and in the United States, of leveraging the enormous purchasing power of government to advance social, economic and environmental policy goals. Historically, such public procurement efforts have focused on issues such as enforcing labor and anti-discrimination laws, supporting minority-owned businesses, and promoting gender equality.¹ Over the last four decades, government purchasing initiatives have also sought to advance environmental objectives—often under the umbrella of “green” or “sustainable” procurement.²

More recently—especially within the last 15 years—public officials and advocates in the United States and around the world have begun working to harness governmental purchasing to procure food that is more sustainable, healthy, and equitable. It is now well-documented that our global food and agricultural system is responsible for significant adverse environmental, public health, and other impacts. It is the source of approximately one-third of all anthropogenic greenhouse gas emissions, consumes 70% of our freshwater and is the leading driver of biodiversity loss.³ Over 8% of the global population faced hunger in 2024, and more than three times that number are food insecure and undernourished.⁴ And there are deep,

¹ See Christopher McCrudden, *Using Public Procurement to Achieve Social Outcomes*, 28 NAT. RES. F. 257, 257 (2004).

² See *id.* at 257.

³ See *infra* notes 98 and 100.

⁴ See *infra* notes 101 and 102.

growing inequities in the world's agro-food system, including disproportionate impacts of food-related disease and the treatment of workers all along the supply chain.⁵ The new public food procurement movement is rooted in the growing awareness of these and other wide-ranging problems. It also stems from the recognition that the massive purchasing power of government represents a key potential strategy for overall global and domestic food system transformation—a “game changer,” in the words of the food arm of the United Nations.⁶

This article focuses on these recent developments: the drive to utilize public procurement to improve our food systems. Specifically, this piece analyzes recent actions in the United States to implement new laws and programs that facilitate public food procurement aligned with nutrition, local economy, environmental, labor, racial, animal welfare and other standards or “values.”⁷ These initiatives are sometimes referred to as “values-based” food or “good food” purchasing.

Most of these efforts are concentrated at the local level, due in part to the lack of a comprehensive federal approach to build more sustainable, healthy, and equitable food systems. These local initiatives also reflect the unique abilities and opportunities that municipalities possess to tackle food-related concerns at schools, hospitals and other public institutions, as well as the important (often

⁵ See *infra* note 104.

⁶ FOOD AND AGRIC. ORG. OF THE U.N., PUBLIC FOOD PROCUREMENT FOR SUSTAINABLE FOOD SYSTEMS AND HEALTHY DIETS VOL. 1, 2 (2021), <https://openknowledge.fao.org/items/22fece6b-b9a8-4f25-9564-d07dce60e14c>; see also Erica Reeve et al., *Strategic Design of Public Food Procurement to Leverage Positive Food Systems Outcomes: A Framework of Actions*, SUSTAINABLE DEV., Dec. 2025, at 1–2, 14 (discussing the potential for public food procurement globally to address hunger, supply healthier food, promote sustainable agriculture, support small and woman-run enterprises and advance other “positive food system outcomes”).

⁷ For an overview of initiatives in the United Kingdom and other European nations to advance values-based food procurement, see KEVIN MORGAN, *SERVING THE PUBLIC* (2025); see also Mark Stein et al., eds., *SUSTAINABLE FOOD PROCUREMENT: LEGAL, SOCIAL AND ORGANISATIONAL CHALLENGES* (2024) (documenting sustainable food procurement efforts in Europe, Eastern Europe and Brazil).

overlooked) role that cities have played in advancing environmental law and policy reforms over the past five decades.⁸

For this reason, I primarily examine how laws in New York and several other states govern food procurement by cities, towns, school districts, and other political subdivisions of the states, as well as efforts to reform these laws to boost values-based food purchasing.⁹ In particular, I focus on existing New York State municipal procurement law and a multi-year effort to enact a first-in-the-nation “good food” law that would explicitly allow—but not mandate—localities to buy food that meets certain growing, sustainability, and

⁸ See, e.g., Mark Bittman et al., *How a National Food Policy Could Save Millions of American Lives*, WASH. POST (Nov. 13, 2014); Nicholas Freudenberg & Marion Nestle, *A Call for a National Agenda for a Healthy, Equitable, and Sustainable Food System*, 110 AM. J. PUB. HEALTH 1671, 1671–73 (2020) <https://pubmed.ncbi.nlm.nih.gov/32853026/> [<https://perma.cc/H5K6-ARP4>]; *Food Systems*, C40 CITIES <https://www.c40.org/what-we-do/scaling-up-climate-action/food-systems/> [<https://perma.cc/P38M-GFXT>]; *The Role of Cities in the Transformation of Food Systems: Lessons from the Milan Pact Cities*, MILAN URB. FOOD POL’Y PACT (July 27, 2018), <https://www.milanurbanfoodpolicypact.org/role-cities-transformation-food-systems-lessons-milan-pact-cities/> [<https://perma.cc/7YMS-QK4V>]; see MORGAN, *supra* note 7, at 20–21, 32–33, 177–78; *Rockefeller Foundation Commits US \$100 Million to Serve 100 Million Children Nutritious School Meals*, ROCKEFELLER FOUND. (Mar. 27, 2025), <https://www.rockefellerfoundation.org/news/rockefeller-foundation-commits-us100-million-to-serve-100-million-children-nutritious-school-meals/> [<https://perma.cc/ERQ9-KEBD>]; KATRINA WYMAN & DANIELLE SPIEGEL-FELD, *LOCAL GREENS: CITIES AND TWENTY-FIRST CENTURY ENVIRONMENTAL PROBLEMS* 6 (2025).

⁹ The term “value based purchasing” is often tied to the emergence of “value based health care” in the 2000s, see SOCIO RESAH, *UNDERSTANDING VALUE BASED PROCUREMENT: A NEW APPROACH TO PURCHASING* 10–12 (2020), <https://www.europeanallianceforvalueinhealth.eu/wp-content/uploads/2020/12/VBP-CoP-Understanding-Value-Based-Procurement-A-new-approach-to-purchasing-2020.pdf> [<https://perma.cc/6ZQ6-VZ6H>]; SOCIO BOSTON CONSULTING GROUP & MEDTECH EUR., *PROCUREMENT: THE UNEXPECTED DRIVER OF VALUE-BASED HEALTH CARE* (2015), https://www.medtecheurope.org/wp-content/uploads/2017/10/2017_MTE_BCG-VBHC-Procurement.pdf [<https://perma.cc/UB28-A4HN>]; see also, Lori Stahlbrand, *Can Values-based Food Chains Advance Local and Sustainable Food Systems? Evidence from Case Studies of University Procurement in Canada and the UK*, 24 INT’L. J. SOCIO. AGRIC. & FOOD, 77, 80 (2017) (discussing origin of the term “values-based food chains”).

other standards.¹⁰ My spotlight on New York law draws heavily from my participation in this legislative effort as an attorney for the Natural Resources Defense Council (“NRDC”).

There is extensive literature on all forms of public procurement, including public food purchasing initiatives.¹¹ This article zeroes in on one area of this field that has received less attention: which specific legal authority do cities and towns have in New York and in other jurisdictions to implement values-based food procurement, and what legal obstacles could they face in advancing these initiatives? Examining current New York State law and the proposed “good food” legislation provides an excellent case study for the opportunities and challenges of advancing local values-based food procurement.

Despite the promise of values-based procurement, progress in shifting local food buying practices in New York and other states has overall been slow to advance. Some of this sluggishness is due to fiscal constraints, the overall complexity of procurement laws and processes, lack of transparency of food supply chains, and limited local knowledge on how to apply values-based purchasing standards.¹² Values-based food procurement efforts also face barriers

¹⁰ Throughout this article, I often use the terms “localities,” “municipalities,” “cities,” “cities and towns,” and “political subdivisions” interchangeably, except where the discussion focuses on specific differences in the law (e.g., laws only applicable to school districts). Each state can define these terms differently.

¹¹ See, e.g., Oishee Kundu, Andrew D. James & John Rigby, *Public Procurement and Innovation: A Systemic Literature Review*, 47 SCI. & PUB. POL’Y, 490-502 (2020); Gianluca Stefani et al., *Public Food Procurement: A Systematic Literature Review*, 8 INT’L J. FOOD SYS. DYNAMICS, 270-283 (2017); Erica K. Akim et al., *Trends and Hotspots in Public Food Procurement: Exploring Planetary Boundaries and Human Needs in an Integrative Literature Review*, 25 J. PUB. PROCUREMENT 95, 97 (2024).

¹² See, e.g., Catherine G. Campbell, *Values-Based Institutional Food Procurement Programs: A Narrative Review*, 12 J. OF AGRIC., FOOD SYS. AND CMTY. DEV., 127 (2023); see Luana F.J. Swensson & Florence Tartanac, *Public Food Procurement for Sustainable Diets and Food Systems: The Role of the Regulatory Framework*, 25 GLOB. FOOD SEC., 2 (2020); Erin Love et al, *A Roadmap for Modeling Institutional and Values-Based Procurement Decision in Food Supply Chains*, 54 AGRIC. AND RES. ECON. REV., 112 (2025); Milken Inst. Sch. of Pub. Health, *Food Procurement in the District of Columbia: A Weak Link in the Value Chain* 19 (2025); see generally Hellen et al., *Transparency for Justice: Buffalo Institutional Suppliers – Extended Executive Summary*, YALE SCHOOL OF THE ENV’T, at 2

from our foodservice industry as well as opposition from influential agricultural stakeholders who believe that value-based purchasing poses a threat to conventional farming practices.¹³

But the New York experience has shown that, in addition to these obstacles, one of the biggest challenges lies in antiquated state laws that regulate municipal food purchasing processes. In New York, like most states, procurement of goods and services by municipalities and other political subdivisions is primarily governed by state law—not local law.¹⁴ And like most states, New York has historically required municipal food (and most other) contracts to be awarded to the “lowest responsible bidder.”¹⁵ There are sound, long-standing reasons for this lowest bid requirement—namely, to guard against fraud and favoritism, and to ensure that municipalities spend public money wisely. At the same time, restricting purchasing to the lowest bidder largely prevents cities and towns from taking social and environmental factors into full account, such as supplying

(2021), <https://www.goodfoodcommunities.org/wp-content/uploads/2021/04/Transparency-for-Justice-Extended-Executive-Summary-March-2021.pdf> [<https://perma.cc/N6X3-5YLY>]; Tina Schneider, Laura Vary & Stephanie Tan, *Complex Supply Chains Are Still a Major Barrier to Ending Deforestation*, WRI (Feb. 29, 2024), <https://www.wri.org/insights/supply-chain-transparency-deforestation> [<https://perma.cc/H67G-3FVD>].

¹³ See e.g., Campbell, *supra* note 12, at 127; see Stahlbrand, *supra* note 9, at 83; Elvira Molin et al., *Sustainable Public Food Procurement: Criteria and Actors’ Roles and Influence*, FRONTIERS IN SUSTAINABLE FOOD SYS., 11 (2024); Raychel Santo & Claire Fitch, *From Foodservice Management Contracts to U.S. Federal Legislation: Progress and Barriers in Values-Based Food Procurement Policies*, INSTS. AS CONSCIOUS FOOD CONSUMERS 77, 79–85 (2019), 79–85, 89–93 in Sapna Thottathill & Annelies Goger, eds., INSTITUTIONS AS CONSCIOUS FOOD CONSUMERS (2019); HANNAH LOUIE, BEYOND NUTRITION: A LANDSCAPE ANALYSIS OF VALUES-BASED PROCUREMENT AMONG FOOD SERVICE MANAGEMENT COMPANIES J 10–11 (2019); N.Y. FARM BUR., 2024 POLICY BOOK, 7 (2024) https://nyfb.org/application/files/3817/0552/3528/2024_NYFB_policy_book_final.pdf [<https://perma.cc/TD57-YDTL>].

¹⁴ IN THE PUB. INTEREST & LOC. PROGRESS IMPACT LAB, HARNESING THE POWER OF PROCUREMENT: ISSUES, CONSIDERATIONS AND BEST PRACTICES TO ADVANCE EQUITY IN THE CONTRACTING OF PUBLIC GOODS AND SERVICES 6 (2023).

¹⁵ See *infra* Part IV D.1.

healthier school food, combatting climate change, and supporting local agriculture.

Recognizing the limitations of the lowest responsible bidder standard, many states have passed laws that allow contracts to be awarded to a vendor with a bid that is a certain percentage (e.g., 10%) higher than the lowest responsible bid if the food is grown or processed within its borders. This purchasing mechanism is generally known as a “price preference” or “bid preference.” More broadly, New York and many other states have also begun to allow cities and towns to award food and other contracts on the basis of “best value.”¹⁶ In general, “best value” procurement enables institutions to weigh factors such as quality, efficiency, long-term costs, and reliability of goods and services when making purchasing decisions, rather than simply awarding contracts to the lowest price. This best value purchasing option represents a significant reform in state procurement laws. Still, statutory definitions of best value generally require that this alternative purchasing approach be rooted in some type of cost-benefit or economic-related analysis—which is often difficult to carry out, especially at the local level, for some environmental, climate, animal welfare, and other values-based food criteria.

Accordingly, this article primarily argues that, to help realize the full promise of values-based food procurement in New York and most other jurisdictions, existing state procurement laws should be changed to *explicitly* empower municipalities to consider these new values-based standards in their purchasing decisions. The two best options for implementing these procurement choices are through (a) “best value” solicitations that allow for values-based food standards to be weighed in the decision-making process and (b) via an expanded price or bid preference scheme for those vendors that satisfy one or more new food purchasing values. Without these statutory reforms, it will be very difficult to significantly expand values-based public food procurement at the local level.

Undertaking these statutory reforms is neither easy nor straightforward. For starters, beyond overcoming the political and other obstacles highlighted above, simply understanding which food procurement laws apply to localities in different states is

¹⁶ See *infra* Part IV B, D.2.

challenging. Procurement laws governing state (and county) governments are usually different than those that apply to municipalities.¹⁷ Furthermore, in some states (like California and Illinois) laws applicable to local procurement hinge on whether a municipality is a so-called “Home Rule” city or not—as well as which applicable laws and regulations any such jurisdiction has enacted under its state-granted authority.¹⁸ Deciphering applicable procurement rules also requires analyzing court decisions interpreting state and local law. And local institutions that receive federal dollars for food purchasing, as is the case with most public school meal programs,¹⁹ must also research and comply with often complex federal procurement requirements.

Where it is possible to advance legislative changes that add or strengthen best value and price preference options for values-based procurement, the lessons learned thus far in New York demonstrate that any new state statutory language should consider several key factors. First, there need to be clear statutory standards for any new food values, and legislators should consider authorizing the promulgation of state regulations that support municipal implementation. Second, there should be supply chain transparency requirements to ensure compliance with any new values-based procurement laws. Third, state law should explicitly authorize localities to use “Request for Proposals” (“RFPs”), or an equivalent solicitation mechanism, to implement any best value procurement methods—and as an alternative to the traditional bid evaluation process. And with either best value or price preference methods, any new or reformed law should not limit its applicability to only in-state farms or vendors.

In Part I, this article sets forth a brief history of values-driven public procurement around the world, in the United States, and in New York State—focusing primarily on the development of

¹⁷ See *infra* Part III.

¹⁸ See *infra* Part III.C.

¹⁹ CONG. RSCH. SERV., *School Lunch and Breakfast Participation: A Snapshot of Recent Trends*, at 11 (Apr. 21, 2025), https://www.congress.gov/crs_external_products/R/PDF/R48515/R48515.1.pdf?utm_source=copilot.com.

“sustainable” procurement laws. Part II focuses on the emergence of the public food procurement movement. After presenting an overview of global, national, and New York State initiatives in this area, this section then discusses growing municipal efforts to advance good food purchasing initiatives in several leading U.S. cities, including Los Angeles, Chicago and New York City. Part III first provides an overview of the lowest bidder and best value purchasing processes and describes how state laws govern the procurement of goods and services by municipalities, including through the delegation of so-called “Home Rule” authority. This section then offers a close examination of New York State’s statutory scheme and case law governing municipal procurement. In Part IV, the article sets forth a detailed discussion of the proposed “good food” procurement legislation in New York. Part V discusses some key legal and policy issues that have surfaced within the efforts to advance the New York bill, including potential U.S. Constitutional concerns under the Dormant Commerce Clause and compliance with federal procurement rules. And finally, in Part VI, this article provides a short concluding section that recaps some of the key factors to consider in reforming state procurement laws.

I. BRIEF HISTORY OF VALUES-BASED PUBLIC PROCUREMENT

Procurement is defined as the buying of goods and services by governments, institutions, and businesses.²⁰ Public procurement refers to the purchasing of goods and services from the private sector by all levels and types of government entities to support essential public functions and objectives.²¹ Public procurement includes both direct purchasing, primarily through contracts, and indirect purchasing, which includes grants, vouchers, and cash reimbursements to

²⁰ See NAT’L ASS’N OF STATE PROCUREMENT OFFICIALS, WHAT IS PROCUREMENT?, https://cdn.naspo.org/RI/ProcurementToolboxIssue1_IntroductiontoProcurement.pdf [<https://perma.cc/RRJ8-P785>].

²¹ See *id.*; THE 2000 MODEL PROCUREMENT CODE FOR STATE AND LOCAL GOVERNMENTS § 2-301 (A.B.A 2000); Iryna Malacina et al., *Capturing the Value Creation in Public Procurement: A Practice-Based View*, 28 J. PURCHASING & SUPPLY MGMT. 1, 1-2 (2022); CHRISTOPHER MCCRUDDEN, BUYING SOCIAL JUSTICE: EQUALITY, GOVERNMENT PROCUREMENT, & LEGAL CHANGE 7 (2007) [hereinafter BUYING SOCIAL JUSTICE].

citizens and non-governmental organizations.²² The estimated global value of public procurement is approximately \$11 trillion, representing 12% of global Gross Domestic Product (“GDP”).²³ In many developing countries, the government is the single largest purchaser of many categories of products and services.²⁴ In the United States, it is estimated that public purchasing totals roughly \$2 trillion per year.²⁵ Of this amount, the federal government purchases around \$760 billion in goods and services and is reportedly the largest consumer in the world.²⁶ States and localities combined—often with federal monies—are estimated to procure almost twice this amount each year, or approximately \$1.3 trillion.²⁷

A. Values-Based Public Procurement in the United States and Abroad

Government procurement around the world has historically been utilized to enforce fair labor wages and rights, support disabled

²² See Shirley-Ann Behravesh, Nicole Darnall & Stuart Bretschneider, *A Framework for Understanding Sustainable Public Purchasing*, 376 J. CLEANER PROD. 1, 2 (2022).

²³ See THE WORLD BANK, GREEN PUBLIC PROCUREMENT: AN OVERVIEW OF GREEN REFORMS IN COUNTRY PROCUREMENT SYSTEMS 10 (2021) (expressed as US dollars). Public procurement expenditure in OECD countries was 12.7% in 2023. OECD, GOVERNMENT AT A GLANCE 146 (2025).

²⁴ See THE WORLD BANK, *supra* note 23, at 10.

²⁵ See Brian J. Baldus & Lindle Hatton, *U.S. Chief Procurement Officers’ Perspective on Public Procurement*, 26 J. PURCHASING AND SUPPLY MGMT. 1, 1 (2020); see also ONVIA, SIZING UP THE \$1.5 TRILLION STATE & LOCAL CONTRACTING MARKET: LEVERAGE DATA TO MAXIMIZE YOUR GOVERNMENT SALES 4 (2015) (estimating \$480 billion for federal government procurement annually and \$1.5 trillion at the state and local levels).

²⁶ *A Snapshot of Government-Wide Contracting for FY 2023*, US GAO (June 25, 2024) <https://www.gao.gov/blog/snapshot-government-wide-contracting-fy-2023-interactive-dashboard> [<https://perma.cc/D34E-XT4V>]; CONG. RSCH. SERV., THE FEDERAL ACQUISITION REGULATION (FAR): ANSWERS TO FREQUENTLY ASKED QUESTIONS (October 25, 2024) https://www.congress.gov/crs_external_products/R/PDF/R42826/R42826.10.pdf [<https://perma.cc/2AVW-PWR3>].

²⁷ See Baldus & Hatton, *supra* note 25. <https://www.sciencedirect.com/science/article/abs/pii/S1478409219301530>.

workers, address unemployment, enforce anti-discrimination laws, assist minority business enterprises, and support gender equality.²⁸ In fact, attempts to link social justice issues to procurement began as far back as the 19th century in England, France, and the United States.²⁹

Early efforts largely focused on labor rights, fair wages, and unemployment.³⁰ As one example, U.S. President Martin Van Buren issued an Executive Order in 1840 requiring a 10-hour workday for those employed under certain government contracts.³¹ After World War I, government procurement also began addressing the needs of marginalized groups, primarily of the disabled.³² In 1938, for instance, the U.S. passed the Wagner-O'Day Act, which established a committee to set fair-market prices for commodities produced by blind individuals and sold to the federal government.³³ These statutory and policy developments catalyzed a trend that continued across the globe as new social policies became a priority. In the decades following World War II, public procurement was also used to address employment discrimination, support disadvantaged groups and minority businesses, and promote greater racial and religious equality in the United States and other countries.³⁴

In the 1960s, as anti-discrimination laws developed in the U.S., government contracts became an increasingly prominent tool for enforcing these laws.³⁵ And globally, over the last 50 years, public procurement has advanced an increasingly diverse array of social justice and policy initiatives, such as boosting indigenous-owned

²⁸ See McCrudden, *supra* note 1, at 257.

²⁹ See McCrudden, *supra* note 1, at 258; JAMES F. NAGLE, A HISTORY OF GOVERNMENT CONTRACTING: VOLUME 1 1, 4, 160 (3rd ed., 2012); JAMES F. NAGLE, A HISTORY OF GOVERNMENT CONTRACTING, A HISTORY OF GOVERNMENT CONTRACTING: VOLUME 2 21, 61, 152 (3rd ed., 2012).

³⁰ See McCrudden, *supra* note 1, at 258.

³¹ See *id.*

³² See *id.*

³³ See *id.*; NAGLE, VOLUME 2, *supra* note 29, at 62.

³⁴ See McCrudden, *supra* note 1, at 259.

³⁵ See *id.* at 259–60; see also Scott L. Cummings & Madline Janis, *Preemption by Procurement*, 70 UCLA L. REV. 392, 416–419 (2023) (discussing the use of federal highway funds in the late 1960s to promote civil rights, environmental and labor objectives).

businesses in Malaysia, promoting greater equity and political transparency in post-Apartheid South Africa, ensuring “fair participation” by both Catholic and Protestant communities in Northern Ireland, and supporting aboriginal economic development in Canada.³⁶

Building on this history, public procurement since at least the 1990s has also been viewed as a vehicle to advance environmental goals—often labeled as “green” or “sustainable” procurement.³⁷ At the international level, one of the earliest examples of these efforts came in 1992 during the first United Nations Conference on Environment and Development, or Rio Earth Summit.³⁸ An overarching theme of this conference was that sustainable development represented the best way to address economic development and environmental protection.³⁹ One of the five major agreements that emerged from this Summit was the Rio Declaration on Environment and Development, which, among other things, called for advancing more sustainable production and consumption practices.⁴⁰ Furthermore, the Declaration’s implementation included “Agenda 21,” a comprehensive set of sustainability action items for countries, as well as calls to improve the environmental elements of government purchasing policies.⁴¹

³⁶ See McCrudden, *supra* note 1, at 259, 260–62.

³⁷ See *id.* at 257.

³⁸ See *The Rio Earth Summit*, U.S. LIBRARY OF CONGRESS (1992), <https://guides.loc.gov/brazil-us-relations/rio-earth-summit-1992> [<https://perma.cc/7W4C-Q8H8>] (last visited Feb. 2, 2026).

³⁹ See *id.*

⁴⁰ See U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, Principle 8, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I) (Aug. 12, 1992), <http://un-documents.net/rio-dec.htm> [<https://perma.cc/JKF3-H4CF>]; see also U.N. ENV’T PROGRAMME, GLOBAL REVIEW OF SUSTAINABLE PUBLIC PROCUREMENT 10 (2017) (noting that the Rio Declaration “call[ed] for national governments to review their procurement policies to encourage more sustainable consumption practices.”).

⁴¹ See generally UNITED NATIONS CONFERENCE ON ENVIRONMENT & DEVELOPMENT, AGENDA 21 17 (1992), <https://sdgs.un.org/publications/agenda21> [<https://perma.cc/S436-S7W2>].

In the United States, official federal green procurement efforts can be traced back to the passage of the federal Resource Conservation and Recovery Act (“RCRA”) in 1976.⁴² This law primarily focuses on the regulation and disposal of hazardous and nonhazardous waste. However, one section of RCRA directs the U.S. Environmental Protection Agency (“EPA”) to identify products made with recycled materials and develop federal guidance for purchasing them.⁴³ The EPA was very slow to implement this Congressional mandate; the agency had only issued five procurement guidelines by the mid-1990s.⁴⁴ In 1993, however, President Bill Clinton issued an Executive Order that broadly required federal agencies to establish “affirmative procurement programs” to increase the purchase of recycled and environmentally preferable products and services in accordance with RCRA and the Executive Order.⁴⁵ More specifically, President Clinton’s Executive Order—entitled “Federal Acquisition, Recycling, and Waste Prevention”—called on federal agencies to, where appropriate, “maximize environmental benefits, consistent with price, performance and availability considerations” through their purchasing.⁴⁶ This Executive Order also set minimum recycled content standards for printing and writing paper for executive agencies—including a minimum of 30% postconsumer content for most paper products by the end of 1998.⁴⁷ President Clinton subsequently issued several other Executive Orders to advance green procurement and, in 1999, the EPA issued its final guidance on its Environmentally Preferable Purchasing Program.⁴⁸

⁴² See Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (1976); Jerrell D. Cogburn & Dianne Rahm, *Environmentally Preferable Purchasing: Who is Doing What in the United States?*, 5 J. PUB. PROCUREMENT 23, 26 (2005).

⁴³ See 42 U.S.C. § 6962 (2002).

⁴⁴ See EPA, ENVIRONMENTAL PROCUREMENT STRATEGY: EPA’S ACTION PLAN FOR IMPLEMENTING EXECUTIVE ORDER 12873 ON FEDERAL ACQUISITION, RECYCLING, AND WASTE PREVENTION 2 (1995).

⁴⁵ Exec. Order No. 12873, 58 Fed. Reg. 54911 (Oct. 22, 1993).

⁴⁶ *Id.* at 54914.

⁴⁷ *Id.* at 54916.

⁴⁸ See Exec. Order No. 1310, 63 Fed. Reg. 49643 (Sep. 9, 1998) Exec. Order No. 13148, 65 Fed. Reg. 24595 (Apr. 21, 2000); U.S. EPA, GUIDANCE ON ENVIRONMENTALLY PREFERABLE PURCHASING (1999); see also JASON J.

Additional Executive Orders issued under Presidents George W. Bush and Barack Obama further expanded the role of the federal government in leveraging its purchasing power to advance sustainability—including, for the first time, taking greenhouse gas emissions into consideration.⁴⁹ Indeed, an Executive Order issued by President Obama in 2015 set a goal of reducing greenhouse gas emissions from federal agencies by 40% over ten years.⁵⁰ Another example of innovative federal action came in January 2021 when President Joe Biden signed an Executive Order calling on a newly created National Climate Task Force to, among other things, align federal procurement programs “to support robust climate action.”⁵¹ This Executive Order also created the “Justice40 Initiative” to help ensure that at least 40% of overall federal climate and infrastructure investments—including through federal procurement—“flow to disadvantaged communities.”⁵²

CZARNEZKI, GREEN PUBLIC PROCUREMENT LEGAL INSTRUMENTS FOR PROMOTING ENVIRONMENTAL INTERESTS IN THE UNITED STATES AND EUROPEAN UNION 89–90 (2019) (noting that the “green purchasing movement began to blossom” with the issuance of President Clinton’s Executive Order 12873 in 1993).

⁴⁹ See Exec. Order No. 13212, 66 Fed. Reg. 28357 (May 18, 2001); Exec. Order No. 13423, 72 Fed. Reg. 3919 (Jan. 24, 2007); Exec. Order No. 13514, 74 Fed. Reg. 52117 (Oct. 5, 2009); Exec. Order No. 13693, 80 Fed. Reg. 15871 (Mar. 19, 2015); see also Romeo N. Niyongere, *European-Style Green Public Procurement in the American Context*, 49 Pub. Cont. L. J. 785, 799-801 (2020) (discussing Executive Orders issued by Presidents Clinton, Bush, Obama and Trump).

⁵⁰ See Exec. Order No. 13693, *supra* note 49.

⁵¹ Exec. Order No. 14008, 86 Fed. Reg. 7619, 7623 (Jan. 27, 2021).

⁵² *Id.* § 223; *Justice40*, The White House (2022), <https://bidenwhitehouse.archives.gov/environmentaljustice/justice40/> [<https://perma.cc/8W97-JJ3L>]; see also IN THE PUB. INTEREST, *supra* note 14, at 20 (noting that this mandate “applies to federal procurements pending in any covered program areas, including climate change, clean energy and energy efficiency, clean transit, affordable and sustainable housing, training and workforce development, remediation and reduction of legacy pollution, and the development of critical clean water and wastewater infrastructure, in both existing and new programs created by the Inflation Reduction Act, the Bipartisan Infrastructure Law and the American Rescue Plan.”). President Donald Trump rescinded this Executive Order on January 20, 2025, his first day in office of his second term. INITIAL RECISSIONS OF HARMFUL EXECUTIVE ORDERS AND ACTIONS (2025) <https://www.whitehouse.gov/presidential->

These collective efforts led to the broader framework of “sustainable procurement” in the U.S. and internationally—generally encompassing environmentally-focused objectives along with social and economic priorities such as diversity, human rights, and equality.⁵³ The United Nations (“U.N.”) has defined “sustainable public procurement” as the “process whereby public organizations meet their needs for goods, services, works and utilities in a way that achieves value for money . . . in terms of generating benefits not only for the organization, but also to society and the economy, whilst significantly reducing negative impacts on the environment.”⁵⁴

As these policies spread worldwide, the U.N. began reporting on sustainable procurement in 2008—a recognition of the fact that public procurement “wields enormous purchasing power” in most countries.⁵⁵ In September 2015, world leaders adopted the United Nations’ global Sustainable Development Goals for 2030, which included a strategy to “promote public procurement practices that are sustainable, in accordance with national policies and priorities.”⁵⁶ In a recent report on this effort, the United Nations Environment Programme emphasized that leveraging the purchasing power of governments can both address the “triple planetary crisis” of climate instability, nature loss and rising pollution,” and “also be an avenue

actions/2025/01/initial-rescissions-of-harmful-executive-orders-and-actions/
[<https://perma.cc/3YRE-YLBQ>].

⁵³ See McCrudden *supra* note 1, at 257; GLOBAL REVIEW OF SUSTAINABLE PUBLIC PROCUREMENT, *supra* note 40 at IX, 1; Behraves, Darnall & Bretschneider, *supra* note 22, at 3.

⁵⁴ GLOBAL REVIEW OF SUSTAINABLE PUBLIC PROCUREMENT, *supra* note 40, at 1; see also *Sustainable Consumption and Production Policies*, U.N. ENV’T. PROGRAMME (last visited Feb. 27, 2026), <https://www.unep.org/explore-topics/resource-efficiency/what-we-do/sustainable-consumption-and-production-policies> [<https://perma.cc/UNY9-JXDY>] (describing what sustainable public procurement is and how it is used to support the U.N.’s goals).

⁵⁵ UNITED NATIONS OFFICE FOR PROJECT SERVICES, 2023 ANNUAL STATISTICAL REPORT ON UNITED NATIONS PROCUREMENT 3 (2024), <https://unsceb.org/sites/default/files/2024-07/2023-ASR.pdf>; GLOBAL REVIEW OF SUSTAINABLE PUBLIC PROCUREMENT 2017, *supra* note 40, at viii.

⁵⁶ G.A. Res. 70/1, Transforming Our World: The 2030 Agenda for Sustainable Development, at 22 (Oct. 21, 2015); GLOBAL REVIEW OF SUSTAINABLE PUBLIC PROCUREMENT 2017, *supra* note 40, at iii.

for addressing critical socio-economic issues, such as human and labor rights, gender inequality, and local economic development, delivering relatively quick and cost-effective wins.”⁵⁷ According to this report, 45 member states have adopted some type of law or policy for promoting sustainable public procurement.⁵⁸

Similarly, in 2014, the European Union (“E.U.”) issued a series of Directives to reform public procurement rules. One key Directive focused on public contracts, noting that procurement is “one of the market-based instruments to be used to achieve smart, sustainable and inclusive growth while ensuring the most efficient use of public funds.”⁵⁹ This Directive added that E.U. nations should integrate “environmental, social and labour requirements into their public procurement procedures.”⁶⁰ As of 2024, various reports on the implementation of the 2024 Directive have emphasized that, by amounting to approximately 17%–19% of the E.U.’s G.D.P., public procurement represents an “indispensable tool for the achievement of the EU’s objectives.”⁶¹

Despite this progress, the last several decades have also witnessed a backlash against using public procurement to advance environmental, social, and sustainable development goals. Beginning in the 1980s, some resistance stemmed from the globalization of economic policy—more specifically, the “neoliberal” view that

⁵⁷ UNITED NATIONS ENV’T’L PROGRAMME, SUSTAINABLE PUBLIC PROCUREMENT: 2022 GLOBAL REVIEW: VOLUME 1 xi (2022).

⁵⁸ *Id.* at 46.

⁵⁹ Council Directive 2014/24, ¶ 2, 2014 O.J. (L 94); *see generally* MARTA ANDHOV, MICHAŁ KANIA, & SVEN MIKULIC, HOW TO PROCURE SUSTAINABLE FOOD AND INCLUDE FARMERS IN PUBLIC PROCUREMENT? LEGAL CONSTRAINTS AND OPPORTUNITIES (2024) (providing an overview of this E.U. law, and the evolution of European sustainable public procurement law).

⁶⁰ Council Directive 2014/24, ¶ 37, 2014 O.J. (L 94).

⁶¹ Willem A. Janssen, *From Letta to Draghi, to Reforming the Public Procurement Directives: Has Sustainability Left the Building?*, EUR. L. BLOG (Mar. 20, 2025), <https://www.europeanlawblog.eu/pub/lze046iw/release/2> [<https://perma.cc/G2JT-6XD8>] (discussing ENRICO LETTA, MUCH MORE THAN A MARKET (2024) and MARIO DRAGHI, THE FUTURE OF EUROPEAN COMPETITIVENESS (2024)).

lowering costs and open competition should be the focus of procurement systems.⁶² And during his first Administration, President Donald Trump issued an Executive Order revoking President Obama's Executive Order that had set a target of cutting the federal government's greenhouse gas emissions by 40%.⁶³ More recently, the second Trump Administration has sought through Executive Orders to reverse federal procurement regulations—rules that, among other things, the Administration views as overly bureaucratic, inefficient, and inclusive of unnecessary affirmative action and nondiscrimination requirements for federal contractors and grantees.⁶⁴ Indeed, one Trump Executive Order requires that federal contractors and grantees certify that they do not operate any diversity, equity, and inclusion and inclusion (“D.E.I.”) programs that violate federal anti-discrimination law.⁶⁵ The current Trump Administration has even sought to ensure, through Executive Orders and regulation, that federal agencies only buy plastic, not paper straws.⁶⁶ Nevertheless, at least globally, support for using public procurement to advance social, environmental, and certain economic goals has increased in recent years⁶⁷

B. *New York State Values-Based Public Procurement*

There is little written about New York State's public procurement history, especially relating to the advancement of broad socio-economic objectives.⁶⁸ Providing even an overview of this history

⁶² See FOOD AND AGRIC. ORG. OF THE U.N., *supra* note 6 at 5, 12; MORGAN, *supra* note 7, at 40, 46; Cummings & Janis *supra* note 35, at 425–28.

⁶³ See Exec. Order No. 13834, 83 Fed. Reg. 23771, 23773 (May 17, 2018) (revoking Exec. Order No. 13693 of 2015).

⁶⁴ See Exec. Order No. 14240, 90 Fed. Reg. 1367 (Mar. 20, 2025); Exec. Order No. 14275, 90 Fed. Reg. 16447 (Apr. 18, 2025); Exec. Order No. 14271, 90 Fed. Reg. 16433 (Apr. 15, 2025).

⁶⁵ See Exec. Order No. 14,173, 90 Fed. Reg. 8633 (Jan. 25, 2025).

⁶⁶ See Exec. Order No. 14,208, 90 Fed. Reg. 9585 (Feb. 10, 2025); Federal Acquisition Regulation: Ending Procurement and Force Use of Paper Straws, 90 Fed. Reg. 34208 (July 21, 2025).

⁶⁷ See FOOD AND AGRIC. ORG. OF THE U.N., *supra* note 6, at 5; GLOBAL REVIEW OF SUSTAINABLE PUBLIC PROCUREMENT, *supra* note 40, at xi.

⁶⁸ The New York State Office of General Services, however, does provide on their website a brief overview of the agency's procurement work since 1960,

is outside the scope of this article. But to cite one modern example would be New York's adoption of the so-called "MacBride Principles" in 1992, which prohibit state agencies from contracting with vendors that have business operations in Northern Ireland or, if they do, require those vendors to take steps to conduct their business in accordance with a set of fair employment principles.⁶⁹ Current New York law also contains other restrictions on state contracts aimed at advancing other values-based objectives, including prohibiting contracts with businesses that are located in jurisdictions that penalize New York State vendors,⁷⁰ are engaged in investment activities in the Iranian energy sector,⁷¹ that do not have sexual harassment policies and annual training,⁷² and (adopted most recently) do not have a policy addressing gender-based violence.⁷³

With respect to environmentally-focused purchasing, one of the state's first milestones came in the late 1980s when New York

including promoting "sustainability in public purchasing." Office of General Services, NEW YORK STATE, <https://ogs.ny.gov/sixty-five-years-procurement-services> [<https://perma.cc/7XTP-TE52>] (last visited Feb. 23, 2026).

⁶⁹ See Chapter 807, 1992 N.Y. Laws 4258, now codified at N.Y. STATE FIN. LAW § 165(5) (Consol. 2026); see also N.Y. STATE OFF. OF GEN. SERVS., NEW YORK STATE PROCUREMENT GUIDELINES 24 (Sept. 2023) (rev. Aug. 2025) (listing Macbride Fair Employment Principles in list of required state procurement document submissions) [hereinafter PROCUREMENT GUIDELINES]; APPENDIX A: STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS 6 (June 2023), <https://ogs.ny.gov/system/files/documents/2023/06/appendix-a-june-2023.pdf>. For more background on these principles, see generally CHRISTOPHER MCCRUDDEN, BUYING SOCIAL JUSTICE: EQUALITY, GOVERNMENT PROCUREMENT, & LEGAL CHANGE 72-73 (2007) [hereinafter BUYING SOCIAL JUSTICE]. One year earlier, in 1991, New York City passed a similar law governing MacBride principles for city contractors. Local Law 34, 199 ADM. CODE OF NYC § 6-115.1.

⁷⁰ See N.Y. STATE FIN. LAW § 165(6) (Consol. 2026); APPENDIX A, *supra* note 69, at 6 (as of June 2023 these discriminatory jurisdictions are South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii).

⁷¹ See N.Y. STATE FIN. LAW § 165-A (Consol. 2026); APPENDIX A, *supra* note 69, at 7; see also N.Y. GEN. MUN. LAW § 103-G (Consol. 2026) (applying this restriction to political subdivisions and other public agencies).

⁷² See N.Y. STATE FIN. LAW § 139-1 (Consol. 2026); PROCUREMENT GUIDELINES *supra* note 69, at 24.

⁷³ See N.Y. STATE FIN. LAW § 139-M (Consol. 2026).

enacted so-called “price preferences” for state and local purchasing of “recycled” paper. As noted earlier, a price preference allows government agencies to select vendor bids that are within a certain percentage higher than the lowest responsible bid if they meet some selected criteria. In 1986, New York State law was amended to allow a 10% price preference for state agencies buying recycled paper versus non-recycled paper.⁷⁴ Two years later, this 10% cost premium for recycled paper was extended to localities via the 1988 Solid Waste Management Act.⁷⁵ This provision was codified under the New York General Municipal Law (“NYS GML”)—the primary set of laws governing municipal procurement in the state (discussed in-depth below). This section of NYS GML, § 104-a, was expanded several years later to allow political subdivisions to award contracts with a 10% price preference for other non-paper goods that met the definition of “recycled products” under state law.⁷⁶ The law was also later changed to authorize up to a 15% price preference when more than 50% of the “secondary materials” of a recycled product came from a New York State waste stream.⁷⁷

Another key moment in the state’s green purchasing history came with the passage of the 1995 Product Stewardship Act, which reformed the state’s procurement laws.⁷⁸ This Act, among other things, codified for the first time the “best value” purchasing option for state agencies.⁷⁹ The Act defined “best value” as “the basis for awarding contracts for *services* to the offerer which optimizes quality, cost and efficiency, among responsive and responsible

⁷⁴ See Chapter 864, 1986 N.Y. LAWS 3276, at 3277.

⁷⁵ See Chapter 70 § 22, N.Y. LAWS 1966, at 1981.

⁷⁶ See N.Y. GEN. MUN. LAW § 104-a (Consol. 2026); Chapter 644, 1994 N.Y. SESS. LAWS (McKinney); Chapter 468, N.Y. SESS. LAWS (McKinney).

⁷⁷ See N.Y. GEN. MUN. LAW § 104-a (Consol. 2026); *see also* N.Y. COUNTY LAW § 626 (McKinney 2024) (analogous law for county purchases); N.Y. TOWN LAW § 122-a (McKinney 2024) (analogous law for town purchases); N.Y. VILLAGE LAW § 5-525 (McKinney 2024) (analogous law for village purchases); N.Y. STATE FIN. LAW § 165(3) (McKinney 2025); N.Y. PUB. AUTH. LAW § 2878-A (McKinney 2024) (analogous law for public authority purchases).

⁷⁸ 1995 N.Y. A.N. 8063.

⁷⁹ 1995 NY 8063, § 33; *see* N.Y. STATE FIN. LAW § 163(1)(J) (McKinney 2025).

offerers.⁸⁰ The Act further specifies that “[s]uch basis shall reflect, wherever possible, objective and quantifiable analysis.”⁸¹

In fact, the Act required that service and technology contracts (not for goods or commodities) for state agencies must be based on “best value.”⁸² This 1995 law also embedded the ability of state agencies to consider “the life span and associated life cycle costs of the given good or service being purchased” in its definition of “cost”—which included costs or savings associated with energy use, maintenance, operation, and disposal.⁸³

Further, “[t]o advance special social and economic goals,” the 1995 Product Stewardship Act exempted “preferred sources” from the traditional competitive bidding requirements.⁸⁴ These sources currently include products and services from correctional, blind, disabled, and veteran focused programs.⁸⁵ Under the Act, state agencies and political subdivisions are directed, in most cases, to buy products and services from these preferred sources where they meet “form, function and utility” and the price is within 15% of the prevailing market price.⁸⁶

⁸⁰ *Id.* (emphasis added).

⁸¹ *Id.*

⁸² 1995 NY 8063, § 33; N.Y. STATE FIN. LAW § 163(4)(d) (McKinney 2025); N.Y. STATE FIN. LAW § 160(7) (McKinney 2025); *see also* PROCUREMENT GUIDELINES, *supra* note 69, at 22 (“State Finance Law § 163(4)(d) mandates that a contract for services (including technology) be awarded on the basis of best value which takes into consideration cost as well as technical or non-cost factors.”).

⁸³ 1995 NY 8063, § 33; *see* N.Y. STATE FIN. LAW § 160(5) (McKinney 2025).

⁸⁴ N.Y. STATE FIN LAW § 162(1) (McKinney 2022).

⁸⁵ *See* N.Y. STATE FIN LAW § 162(2) (McKinney 2022); PROCUREMENT GUIDELINES *supra* note 69, at 10, 44; N.Y. STATE OFF. OF GEN. SERVS., N.Y. STATE PROCUREMENT COUNCIL BULLETIN: PREFERRED SOURCE GUIDELINES 2–3 (2024), <https://ogs.ny.gov/system/files/documents/2025/02/february-2025-nys-preferred-source-guidelines.pdf> [<https://perma.cc/2QBR-VSMC>] [hereinafter NYS PREFERRED SOURCE GUIDELINES].

⁸⁶ 1995 NY 8063 § 33; *see* N.Y. STATE FIN LAW § 162(4) (McKinney 2022); PROCUREMENT GUIDELINES, *supra* note 69, at 10; NYS PREFERRED SOURCE GUIDELINES, *supra* note 85, at 10.

One other relevant provision of the Product Stewardship Act of 1995 was aimed at addressing the problem of deforestation in tropical regions of the globe—including from South America. Specifically, the law required that, with a number of exceptions, bid solicitations by state and local agencies for the “construction of any public work, building maintenance or improvement . . . shall not require or permit the use of any tropical hardwood or wood product.”⁸⁷ Recognizing that tropical forests are the habitat for nearly 50% of all species on the planet and are critical for the sequestration of greenhouse gas emissions, the New York State Legislature has sought in the last several years to further strengthen and expand these provisions.⁸⁸

For several decades, New York State governors have also used Executive Orders to advance environmental objectives through procurement. In 1991, for example, Governor Mario Cuomo issued an Executive Order directing state agencies to use recycled paper, where available, if within a 10% price preference; the same Executive Order also required state agencies to buy non-paper recycled products made from secondary materials, if they were available, cost-competitive, and adequate for the intended purpose.⁸⁹ In 2001, Governor George Pataki signed an Executive Order that directed state agencies to select “ENERGY STAR” products when buying new items or replacing old equipment, as well as increase the purchase of renewable energy by 20% by 2010.⁹⁰ In 2008, Governor

⁸⁷ 1995 NY 8063 § 33; N.Y. STATE FIN. LAW § 165(2)(c)(i) (McKinney 2025).

⁸⁸ Most recently, both houses of the New York State Legislature passed in 2024 the Tropical Rainforest Economic & Environment Sustainability (TREES) Act to, among other reforms, update the list of species of tropical hardwoods subject to the procurement restriction and require state contractors and subcontractors selling a “Tropical forest-risk commodity” (e.g., beef, coffee, palm oil, soy) to certify that they are not contributing to tropical forest degradation or tropical deforestation directly or through their supply chains. Governor Hochul later vetoed this bill, as she did with an earlier version in 2023. S.8898, 2023–24 Leg. Sess. (N.Y. 2024).

⁸⁹ See N.Y. Exec. Order No. 142, N.Y. COMP. CODES R. & REGS. tit. 4, § 4.142 (1991); see also N.Y. STATE FIN. LAW § 165(3) (McKinney 2025) (setting forth definitions and requirements for the purchasing of recycled, remanufactured or recyclable commodities by state agencies.)

⁹⁰ See N.Y. Exec. Order No. 111, N.Y. COMP. CODES R. & REGS. tit. 9, § 5.111 (2001).

David Paterson issued a broad Executive Order that, among other objectives, sought to ensure that New York State’s procurement practices “minimize the potential environmental and health impacts of their activities.”⁹¹ This Executive Order created a new inter-agency committee to develop “green procurement lists” to help accomplish these goals, including “avoidance of risks from the use or release of toxic substances” and the “reduction of greenhouse gases.”⁹²

Later, in 2017, Governor Andrew Cuomo issued an Executive Order in the wake of the first Trump Administration’s withdrawal from the international Paris Climate Agreement, requiring state agencies to adopt plans consistent with a statewide goal of 80% greenhouse reductions by 2050.⁹³ More recently, in 2022, Governor Kathy Hochul signed an Executive Order declaring that “the State’s procurement of commodities, services and technology can be enhanced through . . . choices that minimize the negative environmental and health impacts of their operations.”⁹⁴ In addition to reestablishing strong energy efficiency and clean energy goals for the state, this 2022 Executive Order created the “GreenNY Council” to develop additional procurement specifications that incorporated factors such as water conservation, extended producer responsibility, recyclability, and waste reduction.⁹⁵ According to New York’s most recent report on green procurement and agency sustainability, state agencies spent roughly \$227 million in green products and services in FY 2022–23.⁹⁶ And it notes that there are now 90 green

⁹¹ N.Y. Exec. Order No. 4, N.Y. COMP. CODES R. & REGS. tit. 7, § 7.4 (2008).

⁹² *Id.* § 7.4(C)(3).

⁹³ See N.Y. Exec. Order No. 166, N.Y. COMP. CODES R. & REGS. tit. 9, § 8.166 (2017).

⁹⁴ N.Y. Exec. Order No. 22, N.Y. COMP. CODES R. & REGS. tit. 9, § 9.22 (2022).

⁹⁵ *Id.*

⁹⁶ See GREENNY, GREENING NEW YORK STATE: 12TH PROGRESS REPORT ON STATE GREEN PROCUREMENT AND AGENCY SUSTAINABILITY 42 (2022–23), <https://ogs.ny.gov/system/files/documents/2024/09/greenny-annual-report-fy22-23.pdf> [<https://perma.cc/F8BJ-YG3J>].

procurement specifications that state agencies must use in contracting for commodities, services, and technologies.⁹⁷

II. EMERGENCE OF VALUES-BASED FOOD PROCUREMENT

Globally, food is responsible for roughly one-third of global anthropogenic greenhouse gas (“G.H.G.”) emissions.⁹⁸ Despite this large figure, G.H.G. contributions from the food and agriculture sector receive significantly less attention than emissions from the burning of fossil fuels.⁹⁹ Additionally, our agricultural and food systems also constitute 70% of all global freshwater consumption, cover about 40% of the world’s habitable land, and represent the planet’s primary driver of biodiversity loss.¹⁰⁰ Furthermore, as many as 720

⁹⁷ See *id.* at 44. In 2022, New York State also launched a green procurement program to assist local governments buy more sustainable products. See *Governor Hochul Announces First-In-The-Nation Green Procurement Program for Local Governments*, N.Y. STATE GOVERNOR KATHY HOCHUL (Dec. 15, 2022), <https://www.governor.ny.gov/news/governor-hochul-announces-first-nation-green-procurement-program-local-governments> [<https://perma.cc/WH96-QD3N>]. This “Green Purchasing Communities Program,” among other things, assists localities in using GreenNY approved product specification as well as provides model language a municipality can use to commit to increase green procurement pursuant to GML § 104-a. *Apply Now to Become a Green Purchasing Community*, NEW YORK STATE, <https://ogs.ny.gov/apply-now-become-green-purchasing-community> [<https://perma.cc/U92N-VF6F>] (last visited Apr. 23, 2026).

⁹⁸ See STELLA NORDHAGEN, TY BEAL & KATE SCHNEIDER, GLOB. ALL. FOR IMPROVED NUTRITION ET AL., THE FOOD SYSTEMS COUNTDOWN REPORT 2023: THE STATE OF FOOD SYSTEMS WORLDWIDE 3 (2023), <https://openknowledge.fao.org/server/api/core/bitstreams/00f0fba8-e088-49a8-854c-0aca8ce8a9a9/content> [<https://perma.cc/3LJ9-YK25>]; M. Crippa et al., *Food Systems are Responsible for a Third of Global Anthropogenic GHG Emissions*, 2 NATURE FOOD 198, 198 (2021).

⁹⁹ See Katrina M. Wyman & Emma Dietz, *Integrating Food into Local Climate Policy*, 24 N.Y.U. J. LEGIS. & PUB. POL’Y 725, 727–728 (2022); INT’L PANEL OF EXPERTS ON SUSTAINABLE FOOD SYS., FROM PLATE TO PLANET: HOW LOCAL GOVERNMENTS ARE DRIVING ACTION ON CLIMATE CHANGE THROUGH FOOD 8 (2023), <https://ipes-food.org/wp-content/uploads/2024/03/PlatetoPlanetEN.pdf> [<https://perma.cc/2KMB-GFA6>]; see also MICHAEL GRUNWALD, WE ARE EATING THE EARTH: THE RACE TO FIX OUR FOOD SYSTEM AND SAVE OUR CLIMATE 311 (2025) (“The World Bank found that only 2.4 percent of climate finance is flowing into food and farming.”).

¹⁰⁰ See NORDHAGEN, BEAL & SCHNEIDER, *supra* note 98, at 3 (describing global food systems’ land use and biodiversity impacts); TIM G. BENTON ET AL., FOOD

million people, or roughly 8% of the global population, currently face hunger and undernourishment.¹⁰¹ And 2.3 billion people, or 29% of the global population, are moderately or severely food insecure—that is, they cannot regularly access adequate nutrition.¹⁰² The impacts on kids in particular are glaring: 20% of the world’s children aged 5-19 are overweight—a statistic that has doubled since 2000.¹⁰³ There are also increasingly stark inequities in our food systems, including from hunger, malnutrition, racial and gender-based discrimination, poor treatment of food workers, and

SYSTEMS IMPACTS ON BIODIVERSITY LOSS: THREE LEVERS FOR FOOD SYSTEM TRANSFORMATION IN SUPPORT OFF NATURE; TIM G. BENTON ET AL., *FOOD SYSTEMS* 2, 6 (Chatham House, 2021); Walter Willet et al., *Food in the Anthropocene: The EAT-Lancet Commission on Healthy Diets From Sustainable Food Systems*, 393 *THE LANCET COMM’NS* 447, 449 (2019) (40% land; 70% freshwater; species extinction).

¹⁰¹ FOOD & AGRIC. ORG. OF THE U.N. ET AL., *THE STATE OF FOOD SECURITY AND NUTRITION IN THE WORLD 2025: ADDRESSING HIGH FOOD PRICE INFLATION FOR FOOD SECURITY AND NUTRITION* 4 (2025), <https://openknowledge.fao.org/handle/20.500.14283/cd6008en> [<https://perma.cc/K5ML-NU2V>].

¹⁰² *See id.*

¹⁰³ *See* United Nations Children’s Fund (UNICEF) *FOOD UNICEF, FEEDING PROFIT: HOW FOOD ENVIRONMENTS ARE FAILING CHILDREN, CHILD NUTRITION REPORT 2025*, 2 (2025); *see also* DAVID A. KESSLER, *PETITION TO LIMIT THE EXPOSURE OF REFINED CARBOHYDRATES USED IN INDUSTRIAL PROCESSING IN ORDER TO PREVENT OBESITY, DIABTES, AND CARDIOVASCULAR DISEASE IN CHILDREN AND ADULTS at 10* (2025) (“Only 12.2% of Americans are metabolically healthy. Seventy-four percent are overweight or obese, and about 38% are insulin-resistant or prediabetic. About 1 in 3 adolescents 12 to 17 years old have prediabetes. Americans have a 23–25% lifetime risk of developing heart failure. They have a 40% lifetime chance of developing diabetes”).

prevalence of food-related disease.¹⁰⁴ Also widespread in our global food system are animal harm and suffering.¹⁰⁵

These are some of the main reasons why the EAT-Lancet Commission—a prominent international panel of food experts—stated in 2019 that “[f]ood is the single strongest lever to optimize human health and environmental sustainability on Earth” and that “a radical transformation of the global food system is urgently needed.”¹⁰⁶ And in a follow-up report issued in 2025, the Commission further emphasized that “[a] food systems transformation is fundamental

¹⁰⁴ See, e.g., *Chapter 2 Key Inputs from Summit Workstreams*, UNITED NATIONS FOOD SYS. COORDINATION HUB, <https://www.unfoodsystemshub.org/fs-summit-legacy/food-systems-summit-compendium/chapter-2-levers-of-change/en> [<https://perma.cc/Q4D9-4RLB>] (last visited Feb. 4, 2026); FOOD CHAIN WORKERS ALL., *FOOD CHAIN WORKERS IN 2025: LABOR & EXPLOITATION IN THE FOOD SYSTEM* (2025), <https://foodchainworkers.org/wp-content/uploads/2025/02/Food-Worker-Data-Update-2025-FCWA-3.pdf> [<https://perma.cc/55T9-AH6X>]; Manar Arica Alattar, *Eating Inequity: The Injustice That Brings Us Our Food*, 10 J. AGRIC. FOOD SYS. & CMTY. DEV. 17, 18–19, 21 (June 23, 2021), <https://www.foodsystemsjournal.org/index.php/fsj/article/view/983>; Andrea Freeman, *Unconstitutional Food Inequality*, 55 HARV. C.R. C.L.L. REV. 840 (Oct. 2020); FOOD CHAIN WORKERS ALL. & HEALTH FOOD ALL., *PROCURING FOOD JUSTICE: GRASSROOTS SOLUTIONS FOR RECLAIMING OUR PUBLIC SUPPLY CHAINS* 12–13 (2023), <https://procuringfoodjustice.org/> [<https://perma.cc/339K-LUDR>]; Santo & Fitch, *supra* note 13, at 87.); MARK BITTMAN, *ANIMAL, VEGETABLE, JUNK: A HISTORY OF FOOD, FROM SUSTAINABLE TO SUICIDAL* 261–64, 269–271 (2021).

¹⁰⁵ See generally Jordan O. Hampton et al, *Animal Harms and Food Production: Informing Ethical Choices*, 11 ANIMALS 1, 4–16 (Apr. 23, 2021), <https://www.mdpi.com/2076-2615/11/5/1225> [<https://doi.org/10.3390/ani11051225>] (identifying animal harms relevant to food production); *Revealing the Problem with Factory Farming*, AM. SOC’Y FOR PREVENTION OF CRUELTY TO ANIMALS, <https://www.aspc.org/protecting-farm-animals/problem-factory-farming> [<https://perma.cc/48K2-UY36>] (last visited Feb. 8, 2026); *Animal Welfare: A Cornerstone of Livestock Production and Global Well-Being*, VETERINARIANS WITHOUT BORDERS N. AM. (Jan. 24, 2025), <https://www.vwb.org/site/blog/2025/01/24/animal-welfare> [<https://perma.cc/Q5VS-XQXT>] (describing the prevalence and consequences of poor animal welfare in global livestock production); Santo & Fitch, *supra* note 13, at 88; BITTMAN, *supra* note 104, at 253–57.

¹⁰⁶ EAT, *FOOD IN THE ANTHROPOCENE: THE EAT-LANCET COMMISSION ON HEALTHY DIETS FROM SUSTAINABLE FOOD SYSTEMS* 5 (2025), https://eat-forum.org/wp-content/uploads/2025/09/EAT-Lancet_Commission_Summary_Report.pdf [<https://perma.cc/QFG2-KJ3E>].

for solving crises related to climate, biodiversity, health and justice.”¹⁰⁷

A. *International Food Public Procurement*

In the face of these widespread problems in our global food system, one major component of sustainable government procurement efforts—both internationally and in this country—now focuses on food and agriculture. Like green purchasing, public food procurement is considered a key strategy for advancing important economic, environmental, and social values.¹⁰⁸ This is why over the last 15 years or so, there have been growing calls to leverage the purchasing power of public institutions to not only make our food systems healthier and more sustainable, but also to address the economic treatment of farmers, fair working wages, and other “values-based” food chain/supply issues.¹⁰⁹

At the international level, the Food and Agriculture Organization of the United Nations (F.A.O.) published a comprehensive, two-volume report in 2021 documenting the global growth of sustainable public food procurement, including initiatives in Asia, Africa, Europe, North America, and South America.¹¹⁰ The report

¹⁰⁷ Johan Rockström et al., *The EAT–Lancet Commission on Healthy, Sustainable, and Just Food Systems*, 406 LANCET, Oct. 2025, at 1, 2.

¹⁰⁸ See FOOD AND AGRIC. ORG. OF THE U.N., *supra* note 6.

¹⁰⁹ See, e.g., G.W. STEVENSON & RICH PIROG, VALUES-BASED SUPPLY CHAINS: STRATEGIES FOR AGRI-FOOD ENTERPRISES-OF-THE-MIDDLE (2013), <https://cias.wisc.edu/wp-content/uploads/sites/194/2013/04/valuechainstrategiesfinal0725131.pdf> [<https://perma.cc/6CFB-NDV9>] (describing and advocating for values-based food supply chains); see Stahlbrand, *supra* note 9, at 80; see FOOD AND AGRIC. ORG. OF THE U.N., *supra* note 6, at 196–97; Luana F.J. Swensson & Florence Tartanac, *Public Food Procurement for Sustainable Diets and Food Systems: The Role of the Regulatory Framework*, 25 GLOB. FOOD SEC. 2020, at 1 (discussing the role the regulatory framework can play in public food procurement programs to make food systems more sustainable).

¹¹⁰ See generally, FOOD AND AGRIC. ORG. OF THE U.N., VOL 1 AND 2, *supra* note 6. Volume 2 available at <https://openknowledge.fao.org/items/1fa42eb4-b25b-488a-9726-3dcfc463aaeb>.

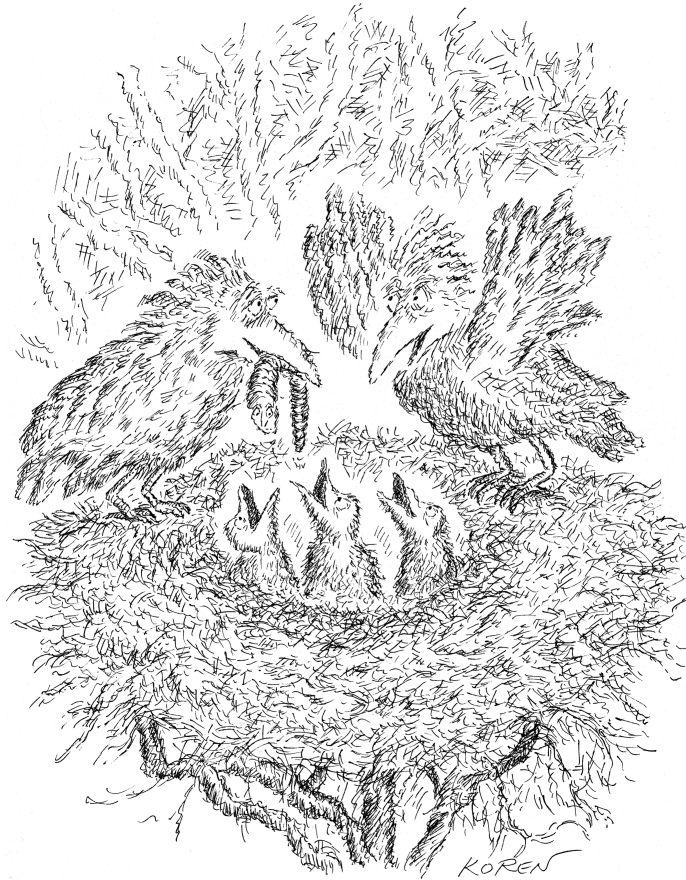
notes that efforts over the previous decade included food purchasing programs in schools, hospitals, universities, and prisons.¹¹¹ It also traces international recognition of the power of public food procurement to the UN's Sustainable Development Goals.¹¹² And the report declared that public procurement of sustainable food is “a game changer for food systems transformation” because it can impact “both food consumption and food production patterns,” as well as “deliver multiple social, economic and environmental benefits to the food system that can contribute to more sustainable healthy diets¹¹³

In sum, over the last roughly 15 years, the international community has ramped up its focus on leveraging values-based public food procurement to tackle the climate, environmental, public health, and other problems in our global food system. As discussed below, there has been similar momentum in the U.S. over this period—primarily within large cities, and building upon the many decades of federal procurement funding for meals in the nation's schools.

¹¹¹ See *id.*, VOL 1 at 2.

¹¹² See *id.* at 80–98.

¹¹³ See *id.* at 2, 12; see also FAO, TRANSFORMING FOOD AND AGRICULTURE THROUGH A SYSTEMS APPROACH v, 45–46, 50 (2025), <https://openknowledge.fao.org/server/api/core/bitstreams/34803993-89ca-48bc-8236-e63a61205bfc/content> [<https://perma.cc/H6KP-XLJ7>]; see Swensson and Tartanac, *supra* note 109, at 1 (“Public food procurement (PFP) programmes have been receiving increasing attention in the literature and from policy makers and development agencies as important policy instruments with the potential to deliver multiple benefits to multiple beneficiaries, including food consumers and food producers”); INT’L PANEL OF EXPERTS ON SUSTAINABLE FOOD SYS., FUEL TO FORK: WHAT WILL IT TAKE TO GET FOSSIL FUELS OUT OF OUR FOOD SYSTEMS? 57 (2025), <https://ipes-food.org/wp-content/uploads/2025/06/FuelToFork.pdf> [<https://perma.cc/5NKA-TQ57>]; WORLD RES. INST., CREATING A SUSTAINABLE FOOD FUTURE: A MENU OF SOLUTIONS TO FEED NEARLY 10 BILLION PEOPLE BY 2050 94 (2019), https://research.wri.org/sites/default/files/2019-07/WRR_Food_Full_Report_0.pdf [<https://perma.cc/DA4M-VJV2>].



“Wait—did you procure that worm humanely?”

Credit: Edward Koren/The New Yorker Collection/The Cartoon Bank

B. United States Government Food Procurement

One of the largest public food procurement efforts in the United States revolves around federal funding for school meals. These initiatives, under the umbrella of the federal Child Nutrition Programs (“CNP”), include the National School Lunch and Breakfast Programs, as well as other smaller food-related programs that provide

meals and snacks to children in schools and other childcare institutions.¹¹⁴ The origins of federal school lunch funding stretch back to the 1930s, and the programs were formally established by Congress in 1946 under the Richard B. Russell National School Lunch Act (“NSLA”).¹¹⁵

It was not until the 1960s that the federal government added breakfast, childcare, and summer meals as additional benefits, in addition to consolidating all these programs under the U.S. Department of Agriculture (“U.S.D.A.”) via the Child Nutrition Act (“CNA”) of 1966.¹¹⁶ In total, federal spending on child nutrition programs today is roughly \$28 billion and supports meals and snacks to kids in all 50 states, the District of Columbia, and the U.S. Territories.¹¹⁷ The National School Lunch Program alone reached nearly 100,000 public and non-profit private schools in 2024, providing 4.8 billion lunches to children between pre-kindergarten and twelfth grade, at a total cost of \$17.7 billion.¹¹⁸

¹¹⁴ See KARA CLIFFORD BILLINGS, CONG. RSCH. SERV., R46234, SCHOOL MEALS AND OTHER CHILD NUTRITION PROGRAMS: BACKGROUND AND FUNDING 1–2 (2025), https://www.congress.gov/crs_external_products/R/PDF/R46234/R46234.15.pdf [<https://perma.cc/3WTH-CFB5>].

¹¹⁵ See Richard B. Russel National School Lunch Act, H.R. 3370, 79th Cong. (1946) (codified as amended at 42 U.S.C. §§ 1751–1769j).

¹¹⁶ See Child Nutrition Act of 1966, S. 3467, 89th Cong. (1966) (codified as amended at 42 U.S.C. §§ 1771–1793), [https://www.congress.gov/bill/89th-congress/senate-bill/3467/text?s=3&r=1&q={\"search\": \"Child+Nutrition+Act+of+1966\"}](https://www.congress.gov/bill/89th-congress/senate-bill/3467/text?s=3&r=1&q={\); GORDON W. GUNDERSON, USDA, THE NATIONAL SCHOOL LUNCH PROGRAM: BACKGROUND AND DEVELOPMENT 21–22 (1971), <https://fns-prod.azureedge.us/sites/default/files/resource-files/NSLP-program-history.pdf> [<https://perma.cc/X372-PC3B>]; KARA CLIFFORD BILLINGS, CONG. RSCH. SERV., R46234, SCHOOL MEALS AND OTHER CHILD NUTRITION PROGRAMS: BACKGROUND AND FUNDING (2023), 1, n. 1 [https://www.congress.gov/crs-product/R46234#:~:text=%2D19%20Pandemic\).-,Background,Columbia%2C%20and%20the%20U.S.%20territories](https://www.congress.gov/crs-product/R46234#:~:text=%2D19%20Pandemic).-,Background,Columbia%2C%20and%20the%20U.S.%20territories).

¹¹⁷ Jessica E. Todd, Child Nutrition Programs, U.S.D.A. Eco. Rsch. Serv. (Sept. 23, 2025) <https://www.ers.usda.gov/topics/food-nutrition-assistance/child-nutrition-programs> [<https://perma.cc/TS97-ZA7N>]; see SCHOOL MEALS AND OTHER CHILD NUTRITION PROGRAMS, *supra* note 116 at 1.

¹¹⁸ Jessica E. Todd, *Child Nutrition Programs – National School Lunch Act*, U.S.D.A. ECON. RSCH. SERV. (Aug. 6, 2025), <https://www.ers.usda.gov/topics/food-nutrition-assistance/child-nutrition-programs/national-school-lunch-program> [<https://perma.cc/P6MM-PEJ4>].

One overarching policy goal of the child nutrition programs, as originally declared in the NSLA, is to “safeguard the health and well-being of the Nation’s children and to encourage the domestic consumption of nutritious agricultural commodities.”¹¹⁹ Congress also stated that this Act was a “measure of national security,” acknowledging the severity of malnutrition and diet-related health issues compromising the country’s military power.¹²⁰ In signing the legislation in 1946, President Harry S. Truman stated that Congress had shown “great wisdom” in enacting the law and that it had “contributed immeasurably both to the welfare to our farmers and the health of our children.”¹²¹

In 1988, Congress went one step further in leveraging the size of federal spending under the nutrition programs to support U.S. agriculture. Specifically, Congress passed the William F. Goodling Child Nutrition Reauthorization Act and included a “Buy American” Provision.¹²² This provision stated that “the Secretary [of Agriculture] shall require that a school food authority purchase, to the maximum extent practicable, domestic commodities or products.”¹²³ The Act defined “domestic commodities” as any agricultural commodity that is produced in the United States or a food

¹¹⁹ Richard B. Russel National School Lunch Act, H.R. 3370, 79th Cong. § 2 (1946) (codified as amended at 42 U.S.C. §§ 1751).

¹²⁰ *Id.*; see also Ashton Ellet, Ian Hebbard & Kaylynn Washpock, *Food, Power, and Politics: The Story of School Lunch*, NEW G.A. ENCYC. (Apr. 16, 2022) <https://www.georgiaencyclopedia.org/exhibition/food-power-and-politics-the-story-of-school-lunch/> [<https://perma.cc/J2GC-HRB3>] (contextualizing Congress’ concern for malnutrition compromising the health of military troops in the history of federal support for local lunch programs).

¹²¹ *Truman Approves School Lunch Bill*, N.Y. TIMES, at 20 (June 5, 1946), <https://timesmachine.nytimes.com/timesmachine/1946/06/05/93121555.html?pageNumber=17> [<https://nyti.ms/4tnP4y9>].

¹²² See William F. Goodling Child Nutrition Reauthorization Act of 1998, H.R. 3874, 105th Cong. § 104(d) (1998) (codified as amended at 42 U.S.C. § 1760(n)). Note that there is long history of “Buy American” federal laws in the United States dating back to at least 1844. See BUYING SOCIAL JUSTICE *supra* note 69, at 26.

¹²³ 42 U.S.C. § 1760(n)(2)(A).

product that “substantially us[es] agricultural commodities that are produced in the United States.”¹²⁴ This was eventually codified in U.S.D.A. regulations, establishing a formal requirement that school food authorities, again to the greatest extent practicable, purchase “domestic” products for students in federally funded school lunches.¹²⁵ All recipients or monies through the federal Child Nutrition Programs must also meet minimum nutritional guidelines (e.g., limits on added sugars and sodium, minimum whole grain requirements) established by the U.S.D.A.¹²⁶

Another key example of leveraging public procurement to advance broader socio-economic values was a provision of the Food, Conservation, and Energy Act of 2008—sometimes referred to as the 2008 Farm Bill.¹²⁷ Specifically, this 2008 Farm Bill required the Secretary of Agriculture to “allow institutions receiving funds [under the NSLA or the CNA] . . . to use a geographic preference for the procurement of unprocessed agricultural products, both locally grown and locally raised.”¹²⁸ This was part of the overall mandate to the agency to “encourage institutions receiving funds under [the NSLA and CNA] to purchase unprocessed agricultural products,

¹²⁴ *Id.* § 1760(n)(1).

¹²⁵ *See* 2 C.F.R. § 210.21(d) (2024); 42 U.S.C. § 1760(n); U.S.D.A. FNS, SP38-2017, COMPLIANCE WITH AND ENFORCEMENT OF THE BUY AMERICAN PROVISION IN THE NSLP (2017), <https://www.fns.U.S.D.A..gov/nslp/compliance-enforcement-buy-american> [<https://perma.cc/GS2X-P2JD>] (providing guidance for USDA implementation of Buy American Provision). In implementing this Congressional mandate, U.S.D.A. has explained that purchasing U.S. grown products would be a “healthy choice” for children participating in a school meal program and would help the local economy. *See* U.S.D.A. FSA, SP 09-2025, BUY AMERICAN ACCOMMODATION PROCESS FOR SCHOOL YEAR 2025-2026 (2025), <https://www.fns.U.S.D.A..gov/schoolmeals/buy-american-accomodation> [<https://perma.cc/LX8Q-FTMF>].

¹²⁶ 89 Fed. Reg. 31962 (Apr. 25, 2024); USDA, SUMMARY OF PROVISIONS IN THE CHILD NUTRITION PROGRAMS: MEAL PATTERNS CONSISTENT WITH THE 2020-2025 DIETARY GUIDELINES FOR AMERICANS FINAL RULE, <https://fns-prod.azureedge.us/sites/default/files/resource-files/DGARuleFinalSummary5.2.24.pdf>; USDA, MEMO -ENHANCING CHILD NUTRITION PROGRAM MEAL STANDARDS, SP 15-205 (June 2, 2025).

¹²⁷ *See* Food, Conservation, and Energy Act of 2008, H.R. 2419, 110th Cong. (2008).

¹²⁸ *Id.* § 4302 (codified as amended at 4.2. U.S.C. § 1758(j)).

both locally grown and locally raised, to the maximum extent practicable.”¹²⁹

Under regulations promulgated in 2011, the U.S.D.A. clarified that any institution that received funds via the CNPs could apply “an optional geographic preference” for selecting “unprocessed and locally grown or locally raised agricultural products.”¹³⁰ Crucially, the Farm Bill did not define the term “locally grown” and permitted local school institutions to do so in a way that seemed fit to their particular needs.¹³¹ But in 2024, the U.S.D.A. significantly changed this “geographic preference” rule to allow child nutrition program recipients to, for the first time, use “locally grown,” “locally raised,” or “locally caught” as a *mandatory specification* when procuring unprocessed products.¹³² Previously, these local sourcing criteria could only be used as a *preference* by child nutrition program recipients under federal law.¹³³ I discuss some of the implications of this change further in Part III.B.3 below.

¹²⁹ *Id.*

¹³⁰ See Geographic Preference Option for the Procurement of Unprocessed Agricultural Products in Child Nutrition Programs, 76 Fed. Reg. 22603, 22603 (Apr. 22, 2011) (codified at 7 C.F.R. pts. 210, 215, 220, 225, 226).

¹³¹ *Id.*

¹³² Child Nutrition Programs: Meal Patterns Consistent With the 2020–2025 Dietary Guidelines for Americans, 89 Fed Reg 31962 (April 25, 2024); codified at 7 C.F.R. §§ 210, 215, 220, 225, & 22.

¹³³ Memorandum from the State Directors, Child Nutrition Programs, All States to the Regional Directors, Child Nutrition Programs, All Regions. 2-3 (May 22, 2024), https://fns-prod.azureedge.us/sites/default/files/resource-files/SP22_CACFP08_SFSP13-2024s.pdf; In addition to this rule encouraging purchasing of local foods for CNP recipients, U.S.D.A. has also established two major grant programs that assist schools in procuring local food under the CNP umbrella: (a) the Patrick Leahy Farm to School Grant Program; and (b) the Local Foods for Schools Cooperative Agreement Program. Despite the success of both of these programs, in early 2025 the Trump Administration announced that it was cancelling funding for them. U.S.D.A. Halts FY25 Patrick Leahy Farm to School Grants, SCHOOL NUTRITION ASSOC. (Mar. 25, 2025), <https://schoolnutrition.org/sna-news/U.S.D.A.-halts-fy25-patrick-leahy-farm-to-school-grants/> [<https://perma.cc/XD7Q-BSQT>]; Benita Gingerella, *U.S. Department of Agriculture announces additional cuts to farm-to-school funding*, FOODSERVICE DIR.

Additionally, in 2011, the U.S. government issued a set of guidelines for federal facilities that sought “to assist employees in making healthier food and beverage choices and to create an efficient and environmentally beneficial food service system.”¹³⁴ These “Food Services Guidelines” (last updated in 2017) seek to ensure that food procurement at federal facilities: serve healthier food and beverages; follow food safety practices; implement environmentally responsible practices; and support local food sourcing.¹³⁵ One specific procurement standard contained in these Guidelines states that federal facilities should “[o]ffer at least 25% of foods and beverages as locally sourced, certified organic, produced with another certified community-development or environmentally beneficial practice, or any combination thereof.”¹³⁶ In 2023, a coalition of 160 non-governmental organizations urged President Joe Biden to require implementation of these Food Service Guidelines in all federally owned and operated facilities and to issue an Executive Order setting forth a timeline and process to develop values-based food procurement standards for all federal agencies.¹³⁷

And, to cite another similar effort, legislation introduced in Congress in 2023 would require the U.S.D.A., as “one of the World’s largest food purchasers,” to expand “healthy, sustainable and ethical food options” for federal program beneficiaries and shift

(Mar. 25, 2025) <https://www.foodservicedirector.com/k-12-schools/U.S.D.A.-announces-cuts-to-farm-to-school-funding> [<https://perma.cc/TUQ5-DUUU>].

¹³⁴ U.S. DEP’T OF HEALTH AND HUM. SERVS., FOOD SERVICE GUIDELINES FOR FEDERAL FACILITIES 6 (2017), https://www.cdc.gov/obesity/downloads/guidelines_for_federal_concessions_and_vending_operations.pdf [<https://perma.cc/D3VZ-NP5U>] [hereinafter FOOD SERVICE GUIDELINES FOR FEDERAL FACILITIES].

¹³⁵ *Id.*; see also FEDERAL GOOD FOOD PURCHASING COALITION, VALUES-ALIGNED FOOD PURCHASING AND SERVICE: PROMISING EXAMPLES FROM U.S. FEDERAL AGENCIES AND PROGRAMS 2 (2023), <https://smallplanetinstitute.app.box.com/s/drmbtzz4t3t9m77r07s41s87gurt6h8r> [<https://perma.cc/U9XP-W2T9>] (discussing the evolution of the federal service guidelines and noting that “[a]s of spring 2023, few operations are implementing the guidelines entirely).

¹³⁶ FOOD SERVICE GUIDELINES FOR FEDERAL FACILITIES, *supra* note 134, at 15.

¹³⁷ See Letter from 160 Non-Governmental Organizations to President Joe Biden (June 29, 2023), <https://www.cspi.org/sites/default/files/2023-06/Federal%20FSG%20EO%20sign-on.pdf> [<https://perma.cc/S5RK-7KLQ>].

the U.S.D.A. “away from evaluating bids based only on cost to evaluating bids based on multiple values, including climate mitigation, worker well-being, resilient supply chains, and equity.”¹³⁸ More specifically, under this pending bill, titled the “EFFECTIVE Food Procurement Act,” the U.S.D.A. would be directed to expand the purchasing of foods that support “socially disadvantaged farmers, fisherman and ranchers”; are “from small or mid-sized family farms”; “are produced by a certified organic farm”; are from farms “participating in an independent animal welfare certification program;” that “are sourced from vendors have signed a labor peace agreement with a bona fide labor union”; and “that are produced using agriculture practices that measurably reduce greenhouse gas emissions,” among other categories.¹³⁹

What this history shows is that the concept of using federal public food procurement dollars to advance social and economic goals is not new—although to date U.S. government programs have largely focused on basic nutritional requirements as well as domestic and local purchasing objectives.

C. *New York State Food Procurement*

Agriculture in New York State is big business. There are over 30,000 farms in the state, and farmland covers more than 20% of New York’s land (6.4 million acres).¹⁴⁰ In total, the state’s

¹³⁸ Press Release, Ed Markey, U.S. Senator, Massachusetts, Ahead of Thanksgiving, Senator Markey, Congresswoman Adams Announce Legislation to Harness Federal Purchasing Power to Build a Just and Resilient Food System (Nov. 20, 2023), <https://www.markey.senate.gov/news/press-releases/ahead-of-thanks-giving-senator-markey-congresswoman-adams-announce-legislation-to-harness-federal-purchasing-power-to-build-a-just-and-resilient-food-system> [<https://perma.cc/C8FT-GHQS>].

¹³⁹ EFFECTIVE Food Procurement Act, S.3390, 118th Cong. § 4 (2023).

¹⁴⁰ 2025 *State Agricultural Overview: New York*, U.S. DEP’T OF AGRIC., https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=NEW%20YORK [<https://perma.cc/Y5E2-BRPE>] (NYS farming operations cover 6.4 million acres); *Forests and Trees*, N.Y. DEP’T OF ENV’T CONSERVATION, <https://dec.ny.gov/nature/forests-trees> [<https://perma.cc/9HTW-3WJ2>] (last visited Mar. 30, 2026) (NYS encompasses 30.2 million acres total);

agricultural sector contributes roughly \$3 billion to the state's GDP and supports more than 160,000 jobs.¹⁴¹ New York ranks in the top ten nationally for over 30 commodities, and it is first in “sour cream, cottage cheese, and yogurt.”¹⁴² At the same time, from 2017 to 2022, New York lost 2,800 farms and 365,000 acres of farmland—and the state is projected to lose hundreds of thousands more acres of farmland by 2040.¹⁴³ This farmland loss is primarily due to conversion to residential, commercial, and industrial development.¹⁴⁴ Further, many farmers in the state rely on non-farm income—and indeed, the majority of farmers in the state list their primary occupation as something different.¹⁴⁵

Recognizing both the importance and challenges of local farms, New York has sought to leverage public procurement to support local farmers and food production. For example, in 1995, via the Product Stewardship Act mentioned above, a new provision of state law was enacted to allow *state* agencies to mandate that all or some of the food it purchased be sourced from state farms or processing facilities.¹⁴⁶ State law governing municipal purchasing,

see also N.Y. STATE COMPTROLLER THOMAS P. DiNAPOLI, NEW YORK'S AGRICULTURE INDUSTRY: A RESILIENT PART OF STATE AND LOCAL ECONOMIES 1 (2022), <https://www.osc.ny.gov/files/reports/pdf/nys-agricultural-industry-2022.pdf> [<https://perma.cc/2FK4-DK3Y>] (stating that “nearly 23% of the state's total land area is in agricultural use”).

¹⁴¹ OFFICE OF NEW YORK STATE COMPTROLLER, FEDERAL IMPACT: NEW YORK STATE FARMING AND AGRICULTURE 1 (Jan. 2026), <https://www.osc.ny.gov/files/reports/pdf/nys-farming-and-agriculture.pdf>.

¹⁴² OFFICE OF THE N.Y. STATE COMPTROLLER, DEPARTMENT OF AGRICULTURE & MARKETS: FARMLAND PROTECTION PROGRAM 7 (2025), <https://www.osc.ny.gov/files/state-agencies/audits/pdf/sga-2025-23s19.pdf> [<https://perma.cc/3TZ5-RQR8>] [hereinafter FARMLAND PROTECTION PROGRAM].

¹⁴³ *See id.* at 1, 7; AM. FARMLAND TR., 2040 FUTURE SCENARIOS: NEW YORK (2022), https://storage.googleapis.com/csp-fut2040.appspot.com/state-reports/FUT2040_NY.pdf [<https://perma.cc/4GXR-HKNG>].

¹⁴⁴ *See* FARMLAND PROTECTION PROGRAM, *supra* note 142, at 7; N.Y. STATE COMPTROLLER THOMAS P. DiNAPOLI, A PROFILE OF AGRICULTURE IN NEW YORK STATE 3(2024), <https://www.osc.ny.gov/files/reports/pdf/profile-of-agriculture-in-nys.pdf> [<https://perma.cc/V8A9-DWX3>] [hereinafter A PROFILE OF AGRICULTURE IN NEW YORK STATE]; AM. FARMLAND TR., *supra* note 143.

¹⁴⁵ *See* A PROFILE OF AGRICULTURE IN NEW YORK STATE, *supra* note 144, at 6.

¹⁴⁶ *See* N.Y. STATE FIN. LAW § 165(4) (McKinney 2025; *see also* N.Y. COMP. CODES R. & REGS. tit. 9, § 250.2(d) (2015) (requiring New York State agency food

discussed more below in Part III.D.3, similarly allows cities and other political subdivisions to mandate that “the essential components” of food products they are purchasing to be grown or processed within the state.¹⁴⁷

Further, certain New York state law provisions, first added in 2018, allow school food authorities to receive a state subsidy of 25 cents per meal if they spend at least 30% of total school lunch food costs purchasing food from New York state farmers, growers, producers, or processors.¹⁴⁸ The qualifying New York State Food products are “defined as a food item that is grown, harvested, or produced in NYS OR is processed in or outside NYS comprising over fifty-one percent agricultural raw materials.”¹⁴⁹ This is sometimes referred to as the “30% New York State Initiative” and is also tied to the state’s larger “Farm-to-School Program,” which as its name suggests, aims to connect schools with local farms and food producers.¹⁵⁰ Unfortunately, more than seven years after its launch, only 10% of school districts (73 out of 762) in the New York State have received reimbursement under the 30% Initiative, and only \$2.9

solicitations to include a list of food products grown, produced, harvested, or processed in New York State); *NYS Food Purchase Report and Guidelines*, N.Y. STATE OFF. OF GEN. SERVS., <https://ogs.ny.gov/procurement/nys-food-purchase-report-and-guidelines> [<https://perma.cc/6GR2-S58V>] (last visited Mar. 1, 2026) (setting forth NYS food purchasing guidelines for state agencies).

¹⁴⁷ See N.Y. GEN. MUN. LAW § 103(8-a) (Consol. 2026).

¹⁴⁸ See Chapter 56 of the Laws of 2018, Part B, § 2; S. 8006C, 2021-2022 Legis. Session, Section 22-b (p 25) (N.Y. 2022); see also N.Y. STATE DEP’T OF AGRIC. & MKTS., 30% NYS INITIATIVE HANDBOOK (2024), <https://agriculture.ny.gov/system/files/documents/2022/09/30initiativehandbook.pdf> [<https://perma.cc/97ZW-ZNYG>] [hereinafter 30% NYS INITIATIVE HANDBOOK] (describing the 30% New York State Initiative).

¹⁴⁹ 30% NYS INITIATIVE HANDBOOK, *supra* note 148, at 2. <https://agriculture.ny.gov/system/files/documents/2022/09/30initiativehandbook.pdf> [<https://perma.cc/MGK2-65L8>].

¹⁵⁰ Dep’t of Agric. and Mkts, *Farm-to-School*, N. Y. STATE, <https://agriculture.ny.gov/farming/farm-school> [<https://perma.cc/LWR2-55MG>] (last visited Apr. 23, 2026)

million of the allocated funds were spent for the most recent school year (2024–25).¹⁵¹

Somewhat confusingly, New York State has created a second 30% benchmark for the government-purchasing of New York State food. Specifically, in 2023, Governor Hochul signed an Executive Order directing state agencies to increase the percentage of food purchased from New York farmers and producers—starting at 5% by the end of 2023 and reaching 30% by the end of 2027.¹⁵² The 2023 Executive Order defines “New York State Food Products” as “agricultural products and food items that are grown, harvested, produced, or processed in the State of New York”—with “processed” meaning that they are “composed of raw materials from both inside and outside of the State,” but that their “predominant value or quantity” is derived from state-grown food and the processing occurs within the New York.¹⁵³

Governor Hochul’s Executive Order cites certain challenges faced by the state’s agricultural sector, compounded by international developments, as an underlying motivation, and specifically asserts that the state’s “rich soils, water availability, vibrant agricultural community, excellent land grant system, and large, diverse markets” provide the perfect opportunity to use policies to improve the state’s food system overall.¹⁵⁴ More broadly, the Executive Order

¹⁵¹ See OFF. OF THE N.Y. STATE COMPTROLLER, DEPARTMENT OF AGRICULTURE AND MARKETS: 30% NEW YORK STATE INITIATIVE 1–2, 9 (2025), <https://www.osc.ny.gov/files/state-agencies/audits/pdf/sga-2026-24s13.pdf> [<https://perma.cc/5GST-C66R>]. This audit notes that New York City, the largest school district in the state, has not yet chosen to participate in this initiative. See *id.* at 9. In January 2022, the Cornell Cooperative Extension released a study evaluating the schools participating in the 30% Initiative for the 2019–2020 school year. See CHERYL BILINSKI, CASSANDRA BULL & BECKY O’CONNOR, 30% NY INITIATIVE: OPPORTUNITIES, BARRIERS, AND PATHWAYS TO SUCCESS (2022). According to the study, there were 145,284 students enrolled at schools being served by a school food authority that qualified for the initiative. In total, qualifying school food authorities spent \$5,151,133 on New York State food products during the 2019–2020 school year. See *id.* at 5–6.

¹⁵² See N.Y. Exec. Order No. 32, N.Y. COMP. CODES R. & REGS. tit. 9, § 9.114 (2023).

¹⁵³ *Id.*

¹⁵⁴ *Id.*

underscores the need to leverage municipal and school district food procurement to “strengthen local economies and contribute to a more resilient and equitable food system statewide.”¹⁵⁵ Preliminary New York State data published in 2023 indicates that state agencies and authorities surpassed Executive Order’s goal of 5% local food purchasing for the year.¹⁵⁶ Specifically, state agencies complying with the Hochul Executive Order and relevant state finance laws spent \$78,692,972 on New York State Food Products, totaling 15% of all food purchased by these state agencies.¹⁵⁷

In short, the recent efforts by New York State government to advance values-based food procurement have focused almost exclusively on boosting state and municipal purchasing of New York State grown or processed food. The success of these efforts is very mixed, and as discussed below in Part IV, this is one reason lawmakers and advocates have placed local food procurement at the center of the pending “good food” state bill.

D. Municipal Efforts: Good Food Purchasing in Four Key U.S.

¹⁵⁵ *Id.* New York Department of Agriculture Commissioner Richard Ball celebrated the Executive Order as a “game-changer,” stating that it will be a tremendous help for New York’s most underserved communities by increasing their options for good, nutritious food. Matthew Sprague & Justin Valezquez, *Hochul Signs Executive Order on New York-Sourced Food*, SPECTRUM LOC. NEWS (Aug. 23, 2023), <https://spectrumlocalnews.com/nys/central-ny/ny-state-of-politics/2023/08/23/hochul-executive-order-new-york-sourced-food> [https://perma.cc/GBJ9-BB5Q].

¹⁵⁶ See N.Y. STATE OFF. OF GEN. SERVS., 2023 NEW YORK STATE FOOD METRICS ANNUAL REPORT 3 (2023), <https://ogs.ny.gov/system/files/documents/2025/01/2023-food-metrics-report.pdf> [https://perma.cc/JP29-LPLK] [hereinafter 2023 NYS FOOD METRICS ANNUAL REPORT]; <https://cbs6albany.com/news/local/new-york-state-governor-kathy-hochul-executive-order-32-local-food-farmers-producers-food-sap-maple-sytup-wineries-apples-cider-senator-rachel-may>; Emma Misiaszek, *New York State Triples Local Food Sourcing Goal, Boosting Support for Farmers*, CBS ALBANY (Aug. 28, 2024), <https://cbs6albany.com/news/local/new-york-state-governor-kathy-hochul-executive-order-32-local-food-farmers-producers-food-sap-maple-sytup-wineries-apples-cider-senator-rachel-may> [https://perma.cc/2GGP-L3CW].

¹⁵⁷ See 2023 NYS FOOD METRICS ANNUAL REPORT, *supra* note 156, at 3.

Cities

Many states in the United States have initiated their own values-based food procurement programs. With some exceptions, these initiatives are solely focused on boosting purchases by state agencies and localities of food grown, produced, or distributed in-state. According to one nationwide survey conducted in 2021, 38 states and the District of Columbia have some type of price or bid preference for in-state purchasing.¹⁵⁸ This includes price preference percentages (e.g., 5%, 10%) where an in-state bid “reasonably exceeds” an out-of-state one, or a tie-breaker in favor of in-state where the out-of-state bid is equal.¹⁵⁹ The survey also identified seven states with local food purchasing goals or quotas.¹⁶⁰

In contrast to most of these state laws and policies, some municipal food procurement efforts seek to go beyond simply supporting local agriculture. Most of these city-focused initiatives also strive to increase the purchasing of “good food” that meet other key social values—largely tied to environmental, nutrition, labor, equity, and animal welfare standards. One reason why cities have championed this movement is an overall lack of leadership at the federal level to make public food procurement more sustainable, healthy, and equitable. As some observers have pointed out, for example, there is no single federal agency or comprehensive national food policy strategy to address environmental, health, and other systemic problems within our food system.¹⁶¹ Many localities have

¹⁵⁸ See COLO. FOOD SYS. ADVISORY COUNCIL, A 50-STATE POLICY SCAN ON THE ROLE OF STATE PROCUREMENT POLICY ON BUYING COLORADO FOOD 8–10, 20–25 (2021), https://cofoodsystemsCouncil.org/wp-content/uploads/2021/08/InstitutionalProcurement_Brief_8-20-21.pdf [<https://perma.cc/JEZ9-4C8S>].

¹⁵⁹ *Id.* at 4, 22–23.

¹⁶⁰ See *id.* at 25–26; see also HEATHER LATINO ET AL., MAXIMIZING THE IMPACT OF NUTRITION INTERVENTIONS WITH LOCAL FOOD PROCUREMENT 9–12, app. A (2025), https://chlp.org/wp-content/uploads/2025/07/Maximizing-the-Impact-of-Nutrition-Interventions-with-Local-Food-Procurement_FINAL_.pdf [<https://perma.cc/P9SC-JYM8>] (listing 38 states, but not the District of Columbia, as having some type of in-state food bid preference.).

¹⁶¹ See Mark Bittman et al., *supra* note 10; *National Food Strategy*, HARVARD L. SCH. CTR. FOR FOOD L. & POL’Y INNOVATION, <https://chlp.org/project/national-food-strategy/> [<https://perma.cc/V392-H7B9>] (last visited Feb. 26, 2026); VT. L. SCH. CTR. FOR AGRIC. & FOOD SYS. & HARVARD L. SCH. FOOD L. & POL’Y CLINIC, EXECUTIVE SUMMARY: THE URGENT CALL FOR A U.S. NATIONAL FOOD STRATEGY

begun to fill this void in part because their communities are most impacted by food insecurity, food-related disease, racial and economic inequities, and food waste.¹⁶² Cities also have a long history in creating school food programs, establishing public and other markets for food distribution, and taking steps to promote food safety.¹⁶³ This role is consistent with broader, often under-acknowledged strides that city governments have made towards implementing many environmental laws and policies.¹⁶⁴

The most well-known values-driven food procurement initiative in the United States is the Good Food Purchasing Program (GFPP).¹⁶⁵ The program was launched in 2012 in the City of Los

(2020), https://foodstrategyblueprint.org/wp-content/uploads/2020/12/FSR_Executive_Summary_120420.pdf [<https://perma.cc/CHT4-T7NP>].

¹⁶² See Nevin Cohen, *Roles of Cities in Creating Healthful Food Systems*, 43 ANN. REV. PUB. HEALTH 419, 420, 430 (2022); Nicholas Freudenberg et al., *Ten Years of Food Policy Governance in New York City Lessons for the Next Decade*, 45 FORDHAM URB. L. J. 951, 952; Nevin Cohen & Rositsa T. Ilieva, *Expanding the Boundaries of Food Policy: The Turn to Equity in New York City*, FOOD POL’Y, 2020, at 1, 9. See generally HARVARD FOOD L. & POL’Y CLINIC, GOOD LAWS, GOOD FOOD: PUTTING LOCAL FOOD POLICY TO WORK FOR OUR COMMUNITIES (Sep. 2017), https://chlp.org/wp-content/uploads/2013/12/good-food-good-laws_toolkit-10.23.2017.pdf [<https://perma.cc/4D3U-ZCV4>].

¹⁶³ Cohen, *Roles of Cities in Creating Healthful Food Systems*, *supra* note 162 at 420; see, e.g., HELEN TANGIRES, PUBLIC MARKETS AND CIVIC CULTURE IN NINETEENTH-CENTURY AMERICA (2019); Helen Tangires, *Feeding the Cities: Public Markets and Municipal Reform in the Progressive Era*, 29 PROLOGUE MAG., Spring 1997 (describing the role municipal governments historically played in distributing food to the public).

¹⁶⁴ See generally Katrina M. Wyman & Danielle Spiegel-Feld, *The Urban Environmental Renaissance*, 108 CAL. L. REV. 305 (2020) (describing “municipal efforts to protect their environments” since the 1800s).

¹⁶⁵ See *The Good Food Purchasing Program*, CTR. FOR GOOD FOOD PURCHASING, <https://goodfoodpurchasing.org> [<https://perma.cc/D3G5-XEYF>] (last visited Feb. 27, 2026). There are other important values-based food initiatives – including The Real Food Challenge, Health Care Without Harm and Menus of Change. See also Campbell, *supra* note 12, at 126. An important procurement program that focuses on the climate impacts of food at both private and public institutions is CoolFood, an initiative run by the World Resources Institute. See

Angeles via an Executive Directive that mandated all city agencies with food purchases over \$10,000 annually to follow “Good Food Purchasing Guidelines” in their budgets, contracts, and concessions.¹⁶⁶ At that time, these Guidelines encompassed five key values: local economies, environmental sustainability, valued workforce, animal-welfare, and nutrition.¹⁶⁷ The Guidelines set forth key implementation steps that set forth baseline, multi-year benchmarks for compliance, a tiered reward system of one to five stars, and traceability requirements.¹⁶⁸ The initial interest in, and success of, this Los Angeles program spurred the 2015 creation of a new non-profit organization, the Center for Good Food Purchasing, to expand the GFPP in California and other jurisdictions.¹⁶⁹

As of 2025, there were 98 public institutions in 39 cities and counties across the U.S engaged in the GFPP, encompassing \$1.2

Coolfood, WORLD RES. INST., <https://www.wri.org/initiatives/cool-food-pledge> [<https://perma.cc/Q74T-AZ5N>] (last visited Feb. 27, 2026).

¹⁶⁶ See L.A., Ca. Exec. Directive No. 24 (Oct. 24, 2012), https://ens.lacity.org/mayor/villaraigosa/mayorvillaraigosa331283141_10242012.pdf [<https://perma.cc/T8YW-WTX8>]; see also Mayor Antonio R. Villaraigosa, *City of Los Angeles Institutes Comprehensive Food Procurement Policy*, CTR. FOR FOOD SAFETY (Oct. 24, 2012), <https://www.centerforfoodsafety.org/issues/304/pollinators-and-pesticides/blog/1212/home> [<https://perma.cc/BEY6-XTQF>] (describing the City of Los Angeles’s adoption of a comprehensive food procurement policy); REPORT FROM THE ARTS, PARKS, HEALTH AND AGING COMM. OF THE CITY OF L.A. TO THE ALL INTERESTED PARTIES (Oct. 29, 2012), <https://gfpp.app.box.com/v/Motion-LACityCouncil-2012> [<https://perma.cc/E2FX-PE54>] (describing the Los Angeles City Council’s motion adopting the Good Food Purchasing Policy).

¹⁶⁷ See Paula Daniels & Alexa Delwiche, *Future Policy Award 2018: The Good Food Purchasing Program, USA*, 5 FRONTIERS SUSTAIN. FOOD SYS. 1, 5-6 (Jan. 10, 2022), <https://www.frontiersin.org/journals/sustainable-food-systems/articles/10.3389/fsufs.2021.576776/full> [<https://doi.org/10.3389/fsufs.2021.576776>]; Lindsey Day Farnsworth, Alexa Delwiche & Colleen McKinney, *The Good Food Purchasing Program: A Policy Tool for Promoting Supply Chain Transparency and Food System Change*, in INSTS. AS CONSCIOUS FOOD CONSUMERS 103, 104 (Sapna E. Thottathil & Annelies M. Goger eds., 2019), <https://www.sciencedirect.com/science/article/abs/pii/B9780128136171000058> [<https://doi.org/10.1016/B978-0-12-813617-1.00005-8>].

¹⁶⁸ See Daniels & Delwiche, *supra* note 167, at 6; Farnsworth, Delwiche & McKinney, *supra* note 167, at 108–09.

¹⁶⁹ See Daniels & Delwiche, *supra* note 167, at 4.

billion in annual food spending.¹⁷⁰ According to the Center for Good Food Purchasing, institutions enrolled in the program for multiple years spent roughly 16% of their food budgets on local foods, an increase on average of over 70% from when they started in the program, on average.¹⁷¹ Meanwhile, as of the end of 2025, institutions enrolled in the GFPP have cumulatively spent over \$12 million on “high animal welfare products”; \$50 million on products qualifying as environmentally sustainable; and over \$540 million with suppliers with union contracts or other valued-workforce protections.¹⁷² In 2023, Version 3.0 of the Good Food Purchasing Standards was released, strengthening and expanding the five value categories and adding new “equity, accountability and transparency” targets that require institutions to commit to diverse spending plans and more stringent public transparency and community engagement standards.¹⁷³

¹⁷⁰ *Year-End Newsletter*, CTR. FOR GOOD FOOD PURCHASING <https://goodfood-purchasing.org/2025-year-end-newsletter/> [<https://perma.cc/7U4T-QJJX>] (last visited Feb. 22, 2026). In 2023, a national coalition of groups, including the Center for the Science in the Public Interest, Friends of the Earth and the Center for Good Food Purchasing, created the Federal Good Food Purchasing Coalition. *See About the Coalition*, FED. GOOD FOOD PURCHASING COAL., <https://www.fedgoodfood-purchasing.org/about> [<https://perma.cc/4LHG-GW3Y>] (last visited Mar. 7, 2026). The primary aim of this new coalitions is to push for “values-aligned food purchasing and food service at the federal level.” *Id.*; *Biden Administration Urged to Improve Federal Food Service Guidelines*, FED. GOOD FOOD PURCHASING COAL. (June 29, 2023), <https://www.fedgoodfoodpurchasing.org/biden-administration-urged-to-improve-federal-food-service-guidelines> [<https://perma.cc/XBZ5-TVAQ>]; *see also* FED. GOOD FOOD PURCHASING COAL., VALUES-ALIGNED FOOD PURCHASING AND SERVICE: PROMISING EXAMPLES FROM U.S. FEDERAL AGENCIES AND PROGRAMS 1 (2023), https://www.cspinet.org/sites/default/files/2023-07/FGFPC_Promising%20Values-Aligned%20Food%20Purchasing%20Examples_7-19-23_Full%20Report.pdf [<https://perma.cc/39ED-NU2N>] (providing examples of values-aligned food purchasing practices across U.S. federal agencies).

¹⁷¹ CTR. FOR GOOD FOOD PURCHASING, *supra* note 171.

¹⁷² Email from Alexa Delwiche, Exec. Dir. of Ctr. for Good Food Purchasing, to author (Jan. 25, 2025) (on file with author).

¹⁷³ GOOD FOOD PURCHASING PROGRAM, GOOD FOOD PURCHASING PROGRAM: PURCHASING STANDARDS FOR FOOD SERVICE INSTITUTIONS v3.0 10–15 (2023),

In 2022, the Center for Good Food Purchasing reported that in the Los Angeles Unified School District (“LAUSD”), among other successes, local food procurement had increased to approximately \$20 million annually (nearly 17% of the districts’ total annual food budget), 100% of all chicken products served were produced without routine antibiotic use, animal protein procurement per meal had dropped 15%, and the districts’ food-related carbon footprint was reduced by an estimated 11%.¹⁷⁴

Several other leading cities have also adopted GFPP values in some form:

Denver:

In 2022, Denver Mayor Michael B. Hancock signed an Executive Order requiring all city agencies with “public meal programs or concessions” over \$1,000,000 per year to procure food from vendors who support six GFPP values: “environmental sustainability, boosting local economies, racial equity, a valued workforce, good nutrition, and animal welfare.”¹⁷⁵ The agencies were directed, among other things, to commit to three-year procurement goals based on these six values, set annual goals to ladder up their compliance with the values, and ensure that 25% of food purchases were from Colorado businesses by 2030.¹⁷⁶ Public meal programs were defined as “meals that the City provides to members of the public pursuant to a federal, state, or local program.”¹⁷⁷ To track progress in Denver, the Good Food Purchasing Program launched an online dashboard that breaks down performance across participating

<https://gfpp.app.box.com/v/GFPPStandards2023> [https://perma.cc/ZHS2-LLZ5] [hereinafter GFPP PURCHASING STANDARDS v3.0]; *2023 Standards Update*, GOOD FOOD PURCHASING PROGRAM, <https://goodfoodpurchasing.org/2023-standards-update/> [https://perma.cc/M89X-RZ64] (last visited Mar. 7, 2026). The slightly revised five categories are: local and community-based economies; environmental sustainability; value workforce; animal welfare; and community health and nutrition requirements. *See* GFPP PURCHASING STANDARDS v3.0, at 4, 13.

¹⁷⁴ *CTR. FOR GOOD FOOD PURCHASING, 10 YEARS OF THE GOOD FOOD PURCHASING PROGRAM* 11 (2022).

¹⁷⁵ *Denver Exec. Order No. 149* (Mar. 14, 2022), https://denver.pre-live.opencities.com/files/assets/public/v/1/executive-orders/documents/149_good_food_purchasing_program-fully-executed.docx.pdf [https://perma.cc/Q8ZP-9P95].

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

institutions and five of the six values (racial equity is not included on this site).¹⁷⁸ As of January 2025, this dashboard analyzed \$23.3 million in food spend.¹⁷⁹

Chicago:

In October 2017, Mayor Rahm Emanuel adopted the GFPP via a City Council Resolution.¹⁸⁰ The resolution declares that the GFPP will help the City “support a regional food system that is ecologically sound, economically viable and socially responsible, and has an impact on the availability of local, sustainable food.”¹⁸¹ In contrast to Los Angeles, the Chicago resolution establishes opt-in, as opposed to mandatory, participation for “City Departments and Agencies” to implement these standards and conduct a baseline assessment.¹⁸²

¹⁷⁸ See *Denver Good Food Purchasing Program Dashboard*, CTR. FOR GOOD FOOD PURCHASING, <https://public.tableau.com/app/profile/gfpp/viz/DenverGoodFoodPurchasingProgramDashboard/Dashboard> [https://perma.cc/KMJ3-NLFZ] (last visited Mar. 2, 2026).

¹⁷⁹ See *id.*

¹⁸⁰ See R2017-727, 2017 City Council (Chi., Ill. 2017); https://www.chicago.gov/content/dam/city/depts/fss/supp_info/CDGA/GoodFoodPurchasingPolicyResolution2018.pdf.

¹⁸¹ *Id.*; Building on this 2017 Resolution, Chicago Mayor Brandon Johnson signed an Executive Order (2025-5) in 2025 requiring that all food (a) “sold or served on City property” or (b) “purchased or made available with City funding” via the city of a city contractor must meet the 2017 “Food Service Guideline for Federal Facilities.” See *supra* notes 134-136. Among other exemptions, the EO did not apply to food provided through state or federal funding where nutrition standards already existed or would “result in a loss of funding.” Chi., Ill. Exec. Order No. 2025-5 (2025).; see also Kade Heather, *Johnson Establishes Nutritional Guidelines for Food Served on City Property*, CHI. SUN TIMES (Aug. 28, 2025), <https://chicago.suntimes.com/city-hall/2025/08/28/johnson-establishes-nutritional-guidelines-for-food-served-on-city-property> [https://perma.cc/ZE39-Z7MM] (summarizing the executive order).

¹⁸² The 2017 resolution itself does not provide a definition for City Departments and Agencies. See R2017-727, 2017 City Council (Chi., Ill. 2017).

In 2018, Cook County (which includes Chicago) also formally adopted the Good Food Purchasing Program.¹⁸³ The Chicago and Cook County agencies, in partnership with the Chicago Food Policy Action Council, then collaborated to create the Good Food Purchasing Initiative of Metro Chicago (GFPI) to help implement the GFPP.¹⁸⁴ In 2021, the Cook County Department of Public Health designated \$4.5 million in federal American Rescue Plan Act funds to support GFPI goals, including creating more opportunities for “Cook Country Black, Indigenous, and People of Color (“BIPOC”) food workers, producers and suppliers” in suburban areas.¹⁸⁵ In 2022, GFPI released a progress report highlighting how state and county agencies are engaging with their food vendors to analyze millions in food spending and better align with GFPP values.¹⁸⁶ In 2023 and 2025, GFPI garnered further investment by attracting philanthropic dollars to support local, small food and farm business and grassroots organizations that build the supply chain of values-based

¹⁸³ See BD. OF COMM’RS OF COOK CNTY., PROPOSED RESOLUTION: TO ADOPT THE GOOD FOOD PURCHASING POLICY, FILE 18-1650 (May 16, 2018), <https://gfpp.app.box.com/v/Resolution-CookCountyIllinois> [<https://perma.cc/ZCY9-M34K>].

¹⁸⁴ See *Good Food Purchasing Initiative*, COOK CNTY. DEP’T OF PUB. HEALTH, <https://cookcountypublichealth.org/chronic-diseases/good-food-purchasing-initiative/> [<https://perma.cc/6W5T-LHHC>] (last visited Mar. 8, 2026); CHI. FOOD POL’Y ACTION COUNCIL, METRO CHICAGO GOOD FOOD PURCHASING INITIATIVE: 2022 ANNUAL REPORT 4 (2022), <https://static1.squarespace.com/static/65c52c90345dc63c9bc955c2/t/65e10a1d0883fd5b006d64cd/1709247062583/GFPI%2B2022%2BAnnual%2BReport%2BFINAL%2B062823.pdf> [<https://perma.cc/97PY-CZPH>] [hereinafter CHICAGO GOOD FOOD PURCHASING INITIATIVE 2022 REPORT].

¹⁸⁵ See COOK CNTY DEP’T OF PUB. HEALTH & CHI. FOOD POL’Y ACTION COUNCIL, GOOD FOOD PURCHASING PROGRAM: 2024 COOK COUNTY UPDATE 12 (2025), https://cookcountypublichealth.org/wp-content/uploads/2025/03/CCDPH-GFPP-report-final_LR_022525.pdf [<https://perma.cc/6ARW-PZVM>] [hereinafter CHICAGO GOOD FOOD PURCHASING PROGRAM 2024 REPORT].

¹⁸⁶ See CHICAGO GOOD FOOD PURCHASING INITIATIVE 2022 REPORT, *supra* note 184, at 8. <https://static1.squarespace.com/static/65c52c90345dc63c9bc955c2/t/65e10a1d0883fd5b006d64cd/1709247062583/GFPI+2022+Annual+Report+FINAL+062823.pdf>.

food.¹⁸⁷ Most recently, Cook County released a 2024 report on GFPP progress—via assessments from the Center for Good Food Purchasing and programming by the Chicago Food Policy Action Council—that highlighted \$651,000 invested in locally procured food and \$228,000 in suppliers with union contracts.¹⁸⁸

Boston:

In 2019, Boston’s City Council passed the Boston Good Food Purchasing Program Ordinance.¹⁸⁹ This Ordinance was pushed by a diverse group of stakeholders and was introduced by then councilor-at-large, and now Mayor, Michelle Wu.¹⁹⁰ In doing so, future Mayor Wu stated that she hoped the growing GFPP would “bring the issue of food justice to a wider audience” and that turning to “local, sustainable, fair, humane, and healthy” choices would be a

¹⁸⁷ *Awarding Over \$670k to Support Farmers and Food Businesses Serving Metro Chicago*, CHI. FOOD POL’Y ACTION COUNCIL (Apr. 9, 2025), <https://www.chicagofoodpolicy.com/blog/2025/4/9/awarding-over-670k-to-support-farmers-and-food-businesses-serving-metro-chicago> [https://perma.cc/GJX4-WQ7A]; *Newly Launched GFPI Community Fund Announces 2023 Grant Recipients to Pursue GFPP-Aligned Projects Supporting Metro Chicago Community Meal Sites and Public Institutions*, CHI. FOOD POL’Y ACTION COUNCIL (Dec. 7, 2023), <https://www.chicagofoodpolicy.com/blog/2023/12/7/newly-launched-gfpi-community-fund-announces-2023-grant-recipients-to-pursue-gfpp-aligned-projects-supporting-metro-chicago-community-meal-sites-and-public-institutions> [https://perma.cc/M4ZW-LBLC].

¹⁸⁸ See CHICAGO GOOD FOOD PURCHASING PROGRAM 2024 REPORT, *supra* note 184, at 10.

¹⁸⁹ See BOS. MASS. CODE ORDINANCES ch. IV, § 4-9 (2019) (<https://www.boston.gov/sites/default/files/document-file-02-2019/0139.pdf>) [https://perma.cc/9EB7-LUXU]; Nadra Nittle, *Boston Brings Sustainability, Equity to Its Food Purchasing*, CIV. EATS (June 10, 2019), <https://civileats.com/2019/06/10/boston-brings-sustainability-equity-to-its-food-purchasing/> [https://perma.cc/6L48-QMLA].

¹⁹⁰ See HEALTHY FOOD POL’Y PROJECT, CASE STUDY: BOSTON, MA 1 (2024), <https://healthyfoodpolicyproject.org/wp-content/uploads/boston-ma.pdf> [https://perma.cc/ADE8-9PLK].

“fundamental shift to build a better future.”¹⁹¹ The Ordinance requires city departments and agencies buying or serving food to adopt the GFPP standards as “a framework for guiding values driven purchasing.”¹⁹² Among other tasks, city departments must request food vendors to share data to help the relevant department or agency conduct a baseline assessment of their food procurement practices and then incorporate the GFPP standards into the agencies’ procurement requests and contracts within one year of that review.¹⁹³

Since its passage in 2019, much of the Ordinance’s implementation has focused on Boston’s Public Schools (“BPS”), the largest public purchaser of food in the state.¹⁹⁴ Based on the most recent assessment (School Year 2023–24) of the district’s food service program by the Center for Good Food Purchasing, BPS met purchasing targets for four out of the five value categories and met all Equity, Accountability, and Transparency requirements.¹⁹⁵ Additionally, BPS increased its local purchasing by roughly 9%; increased its purchases from suppliers with “valued workforce” by 2.3%; and

¹⁹¹ Nadra Nittle, *Boston Brings Sustainability, Equity to Its Food Purchasing*, CIV. EATS (June 10, 2019) <https://civileats.com/2019/06/10/boston-brings-sustainability-equity-to-its-food-purchasing/> [<https://perma.cc/6L48-QMLA>].

¹⁹² BOS. MASS. CODE ORDINANCES ch. IV § 4-9.2 (2019), <https://www.boston.gov/sites/default/files/document-file-02-2019/0139.pdf> [<https://perma.cc/9EB7-LUXU>]; see also Nadra Nittle, *Boston Brings Sustainability, Equity to Its Food Purchasing*, CIV. EATS (June 10, 2019) <https://civileats.com/2019/06/10/boston-brings-sustainability-equity-to-its-food-purchasing/> [<https://perma.cc/6L48-QMLA>] (discussing passage of the GFPP Ordinance and noting that Boston was the first city in New England to adopt this type of measure).

¹⁹³ See BOS. MASS. CODE ORDINANCES ch. IV § 4-9.2 (2019), <https://www.boston.gov/sites/default/files/document-file-02-2019/0139.pdf> [<https://perma.cc/9EB7-LUXU>].

¹⁹⁴ See Good Food Purchasing Program at Boston Public Schools, CITY OF BOS. (last updated May 9, 2025), <https://www.boston.gov/departments/food-justice/good-food-purchasing-program/good-food-purchasing-program-boston-public-schools> [<https://perma.cc/2AN4-T7SR>].

¹⁹⁵ See CTR. FOR GOOD FOOD PURCHASING, BOSTON PUBLIC SCHOOLS, ANNUAL ASSESSMENT, SCHOOL YEAR 2023–2024 at 3 (2024), <https://drive.google.com/file/d/1xWervMrF-mFPJr8KWwc32UWB7EbeGmW3/view> [<https://perma.cc/YE48-KV5G>].

boosted its procurement of whole and minimally processed foods by over 12% from its baseline.¹⁹⁶

New York City

In 2022, via a Mayoral Executive Order, New York City formally established a “Good Food Purchasing” initiative.¹⁹⁷ Based on the national GFPP, this NYC initiative broadly seeks annual information “that provides transparency about how mayoral agencies’ procurements impact core values relating to local economies, environmental sustainability, valued workforce, animal welfare, and nutrition affecting the health of all New Yorkers.”¹⁹⁸

The current program does not directly require city procurement contracts to incorporate GFPP values. But NYC has adopted stringent nutrition standards for over 220 million meals and snacks it serves annually.¹⁹⁹ The NYC Food Standards establish minimum servings of fruits, vegetables, whole and minimally-processed plant proteins, and whole grains, while limiting sodium, trans fats, added sugars, and artificial colors.²⁰⁰ And the city indicates that “Good

¹⁹⁶ *Id.* at 7, 11, 15.

¹⁹⁷ See CITY OF N.Y. OFF. OF THE MAYOR, EXEC. ORDER NO. 8 COMMITMENT TO HEALTH AND NUTRITION: FOOD STANDARDS AND GOOD FOOD PURCHASING (2022), <https://www.nyc.gov/office-of-the-mayor/news/008-002/executive-order-8> [<https://perma.cc/LW62-R8X3>] [hereinafter EO 8]; More broadly, over the last two decades years, New York City government has taken a leadership role in advancing local food procurement and other food-related policies. See Cohen & Ilieva, *supra* note 162, at 4, 5, 7; Freudenberg et al., *supra* note 162 at 965, 969.

¹⁹⁸ EO 8 at § 4.

¹⁹⁹ N.Y.C. OFFICE OF FOOD POLICY & N.Y.C. CITY DEP’T OF HEALTH, NEW YORK CITY FOOD STANDARDS: 2025 COMPLIANCE REPORT 2 (2025). The development of these standards for meals purchased, prepared or served by city agencies and its contractors was first launched in 2008 by Mayor Michael Bloomberg via an EO. *Exec. Order No. 122*, N.Y.C. OFF. OF THE MAYOR (Sept. 19, 2008), http://www.nyc.gov/html/om/pdf/eo/eo_122.pdf [<https://perma.cc/M3TH-767E>]. In 2022, NYC Mayor Eric Adams reaffirmed these standards through EO 8, *supra* note 197.

²⁰⁰ N.Y.C. DEP’T OF HEALTH AND MENTAL HYGIENE, NYC CITY FOOD STANDARDS - MEALS AND SNACKS PURCHASED AND SERVED (Aug. 2025), <https://www.nyc.gov/assets/doh/downloads/pdf/cardio/cardio-meals-snacks-standards.pdf> [<https://perma.cc/F3HH-UZHQ>].

Food Purchasing framework priorities are included throughout the Standards and reflect the interrelated nature of promoting individual, community and planetary health.”²⁰¹ In 2012, NYC also played a leadership role in creating the Urban School Food Alliance, a coalition of 19 of the largest school districts around the country that seeks to leverage the almost \$1 trillion of purchasing power of its districts to provide healthier and high quality environmentally friendly food.²⁰²

Starting in fiscal year 2019, the Mayor’s Office of Food Policy has published data on its website on how much the city agencies are spending on some but not all of the five GFPP value categories it identified. Published data includes numbers on total GHG emissions and by food type, money spent on city and state businesses (including minority and women-owned enterprises), and compliance with nutrition standards. There is no data yet on how sourced food meets animal welfare standards (only total weight of animal products

²⁰¹ *NYC Food Standards*, N.Y.C. FOOD POL’Y, <https://www.nyc.gov/site/food-policy/programs/food-standards.page> [<https://perma.cc/Q8NL-5NWW>] (last visited Feb. 27, 2026).

²⁰² *We Are the Urban School Food Alliance*, URB. SCH. FOOD ALL, <https://urbanschoolfoodalliance.org/about-us/> [<https://perma.cc/8DAE-84F5>] (last visited Feb. 27, 2026); Jessica Leber, *The Unlikely Alliance That Is Fixing School Lunches*, FAST CO. (July 9, 2015), <https://www.fastcompany.com/3047909/the-unlikely-alliance-that-is-fixing-school-lunches> [<https://perma.cc/757N-VVFN>]. The importance of changing procurement practices in schools has been a focus of the The Rockefeller Foundation, *The Power of Procurement*, THE ROCKEFELLER FOUND., <https://www.rockefellerfoundation.org/initiatives/the-power-of-procurement/> [<https://perma.cc/ZVA5-22TK>] (last visited Feb. 27, 2026); see THE ROCKEFELLER FOUND. & CTR. FOR GOOD FOOD PURCHASING, TRUE COST OF FOOD: SCHOOL MEALS CASE STUDY 1 (2021) (noting that “while school meal programs cost \$18.7 billion per year to run, they provide nearly \$40 billion in human health and economic benefits, providing at least \$21 billion in net benefit to society even when we measure only their benefits to human health and economic equity.”); see also *Serving a Healthy Future: The Impact of Values-Based Procurement in Health Care*, THE COMMON MKT., <https://www.thecommonmarket.org/blog/serving-a-healthy-future-the-impact-of-values-based-food-procurement-in-healthcare?gad> [<https://perma.cc/PFW3-LUWW>] (last visited Feb. 27, 2026) (discussing the benefits of values-driven food procurement in the healthcare context).

bought), or on valued workforce (only primarily descriptions of city workforce development programs).²⁰³

Building on its Good Food Purchasing initiative, in April 2023 the City committed also to reducing its food-based climate emissions by 33% by 2030.²⁰⁴ At that time, the city stated that emissions from the food sector—including food purchased for consumption at home and at restaurants—represented 20% of the city’s overall climate emissions.²⁰⁵ In this so-called “integrated” inventory

²⁰³ *Purchasing Data*, NYC FOOD POLICY, <https://www.nyc.gov/site/food-policy/good-food-purchasing/citywidedata.page>.

²⁰⁴ *See Mayor Adams Commits to Reducing City’s Food-Based Emissions by 33 Percent by 2030 After Releasing New Greenhouse Gas Emissions Inventory Incorporating Emissions from Food*, N.Y.C. (Apr. 17, 2023), <https://www.nyc.gov/office-of-the-mayor/news/263-23/mayor-adams-commits-reducing-city-s-food-based-emissions-33-percent-2030-after-releasing#/0> [<https://perma.cc/L736-SLER>]. At the same time, the city also launched the Plant-Powered Carbon Challenge, an initiative to urge non-governmental institutions to commit to reduce their food-based emissions by 25% by 2030. *Id.*; *see also* NEW YORK CITY OFFICE OF FOOD POLICY, PLANT-POWERED CARBON CHALLENGE, ANNUAL REPORT (Aug. 2024) (first year progress report on this Challenge). Additionally, in 2021, the City also committed to reduce food-related greenhouse gas emissions by 25% by 2030 through the Cool Food Pledge, an initiative of the World Resources Institute. *See* The Low-Carbon “Cool Food” Movement Brings Wins in Fight Against Climate Change, WORLD RES. INST. (Sep. 21, 2022), <https://www.wri.org/news/low-carbon-cool-food-movement-brings-wins-fight-against-climate-change> [<https://perma.cc/D4YB-3JN5>]. New York was the first city in the nation to join this Pledge. *See* Katrina M. Wyman & Emma Dietz, *Integrating Food into Local Climate Policy*, 24 N.Y.U. J. LEGIS & PUB. POL’Y 725, at 729–30 (2022).

²⁰⁵ *See Mayor Adams Commits to Reducing City’s Food-Based Emissions by 33 Percent by 2030*, *supra* note 204; *NYC GHG Inventories, Integrated Citywide and Consumption*, <https://www.nyc.gov/content/climate/pages/initiatives/nyc-greenhouse-gas-inventories>; *see also* ECODATALAB, NEW YORK CITY HOUSEHOLD CONSUMPTION-BASED EMISSIONS INVENTORY 4, <https://www.nyc.gov/assets/climate/downloads/pdfs/NYC-Household-Consumption-GHG-Emissions-Inventory.pdf>. (“Food is the leading source of household emissions in New York City, responsible for 25% of total residential consumption emissions. Within the food category, eating out and animal products (including meat, dairy, fish, &

approach, including combined citywide and household consumption emissions, food was the third largest source of emissions following buildings (35%) and transportation (21%).²⁰⁶ The city recently reported that between FY19 and FY23, reductions in its procurement of “ruminant meats and other animal-based food led to a 29% reduction in its food-related GHG emissions or 44% less per “plate” (per 1000 calories).²⁰⁷ These reductions were accompanied by expanded plant-based meal offerings across city agencies, with significant shifts in public schools and hospitals.²⁰⁸

As this discussion shows, over the last 10–15 years, many of the largest U.S. cities have launched new public food procurement efforts—largely centered around the Good Food Purchasing program and its key value categories. It is difficult to document precisely how much food has been purchased through these municipal efforts, especially in relation to total food purchasing in those cities. But the increased visibility of these programs has elevated policy discussions around values-based food purchasing in general. And it has begun to direct more attention on government buying strategies that go beyond just boosting local food.

In the next section, I provide an overview of how state laws largely govern municipal government food purchasing, describe the most common vendor solicitation methods, and examine the food procurement laws of several leading states—including New York.

eggs) are the largest sources, accounting for nearly half of all food emissions.”).

²⁰⁶ See *Mayor Adams Commits to Reducing City’s Food-Based Emissions by 33 Percent by 2030 After Releasing New Greenhouse Gas Emissions Inventory Incorporating Emissions from Food*, N.Y.C. (Apr. 17, 2023), <https://www.nyc.gov/office-of-the-mayor/news/263-23/mayor-adams-commits-reducing-city-s-food-based-emissions-33-percent-2030-after-releasing#/0> [<https://perma.cc/L736-SLER>].

²⁰⁷ N.Y.C. OFF. OF FOOD POL’Y, *FOOD FORWARD NYC: 2-YEAR PROGRESS REPORT, FY 2024-5* 17 (2025), https://www.nyc.gov/assets/foodpolicy/downloads/pdf/NYC_FoodReport_2025.pdf [<https://perma.cc/K5XF-X8RA>] [hereinafter *FOOD FORWARD NYC*]; COOLFOOD, *2023 CLIMATE IMPACT REPORT: CITY OF NEW YORK CITYWIDE* 9 (2024).

²⁰⁸ See N.Y.C. OFF. OF FOOD POL’Y, *supra* note 207, at 17.

III. STATE PROCUREMENT LAW GOVERNING MUNICIPALITIES

The United States Constitution does not mention local governments—only states.²⁰⁹ For this reason, cities and towns are considered legal creatures of the state, and in general localities only possess the powers granted to them by state constitutions and legislatures.²¹⁰ This is why the procurement of goods and services by municipalities and other political subdivisions is primarily governed by state law.²¹¹ In some states, like New York, local procurement is almost completely controlled by state statute and regulations.²¹² And, in some jurisdictions, state legislatures or constitutions have given cities and towns more autonomy to shape some of their procurement laws and procedures. More specifically, this delegated authority is often referred to as “Home Rule,” and, largely grants local governments a range of powers to act on “local” or “municipal” affairs unless specifically prohibited by law.²¹³ A contrasting doctrine, called “Dillon’s Rule,” views local governments as essentially only having the powers explicitly granted to

²⁰⁹ See NAT’L LEAGUE OF CITIES, PRINCIPLES OF HOME RULE FOR THE TWENTY-FIRST CENTURY 7 (2020), <https://www.nlc.org/wp-content/uploads/2020/02/Home-Rule-Principles-ReportWEB-2-1.pdf> [<https://perma.cc/F6AH-YXTW>]; see also Joshua S. Sellers & Erin A. Scharff, *Preempting Politics: State Power and Local Democracy*, 72 STAN. L. REV. 1361,1371 (2020) [hereinafter *Preempting Politics*] (noting that localities lack sovereignty in the U.S. constitutional system).

²¹⁰ See Sellers & Scharff, *supra* note 209; EUGENE MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS §§ 1:21–1:22 (3d ed. 2025); 2 EUGENE MCQUILLIN, THE LAW OF MUNICIPAL CORPORATIONS § 4.3 (3d ed. 2025) [hereinafter 2 MCQUILLIN]; AM. CITY CNTY. EXCH., BALANCING STATE & LOCAL POWER 1 (2023).

²¹¹ See DANIELLE M. CONWAY, STATE AND LOCAL GOVERNMENT PROCUREMENT 2–4 (2012).

²¹² See OFF. OF THE STATE COMPTROLLER, COMPETITIVE BIDDING UNDER GENERAL MUNICIPAL LAW § 103.2 (2020).

²¹³ NAT’L LEAGUE OF CITIES, PRINCIPLES OF HOME RULE FOR THE TWENTY-FIRST CENTURY 11 (2020), <https://www.nlc.org/wp-content/uploads/2020/02/Home-Rule-Principles-ReportWEB-2-1.pdf>; HARVARD FOOD L. AND POL’Y CLINIC, *supra* note 162, at 7–9.

them by state legislatures, plus any powers reasonably implied.²¹⁴ Determining whether a state can be considered a Home Rule or Dillon's Rule jurisdiction is not a straightforward exercise.²¹⁵ Finally, as discussed more in Part V.C, localities must also follow federal procurement regulations when using U.S.D.A. or other federal monies.

In general, state and local procurement processes—as well as federal purchasing—award public contracts using two primary methods: (a) to the lowest responsible bidder; (b) to the vendor whose proposal provides the best value.²¹⁶ I address these in turn below.

A. Lowest Responsible Bidder Standard

Since the early 1800s, governments in the United States have relied on the “relatively simplistic lowest-bid process” as the primary method for procurement.²¹⁷ There have been at least two predominant rationales for this approach. First, awarding a public contract to the lowest responsible bidder was seen as a solution to combat government corruption and mismanagement of funds,

²¹⁴ PRINCIPLES OF HOME RULE FOR THE TWENTY-FIRST CENTURY, *supra* note 213 at 10; 2 McQUILLIN, *supra* note 210, § 4.11.

²¹⁵ See, e.g., Jesse J. Richardson, Jr. et al., Is Home Rule the Answer? Clarifying the Influence of Dillon's Rule on Growth Management, (Jan., 2003), <https://www.brookings.edu/wp-content/uploads/2016/06/dillonsrule.pdf> [<https://perma.cc/2755-HATM>]; JON D. RUSSELL, AMERICAN CITY COUNTY EXCHANGE, BALANCING STATE & LOCAL POWER 9 (2023), https://alec.org/wp-content/uploads/2023/11/2023-ACCE-The-Balancing-Act_Web.pdf (describing how Home Rule and Dillon Rule are “not mutually exclusive” and that “[a] state can be both a Home Rule state and a Dillon Rule state simultaneously”).

²¹⁶ See Merle M. DeLancey Jr., *Fixed Price Contracts: Government Contractors Beware*, NAT'L L. REV. (Jan. 30, 2025) <https://natlawreview.com/article/fixed-price-contracts-government-contractors-beware> [<https://perma.cc/4X3W-YKBG>]; FAR 16.2 (2026).

²¹⁷ NIGP: INST. FOR PUB. PROCUREMENT, BEST VALUE IN GOVERNMENT PROCUREMENT: CONCEPTS AND PRACTICES 1(2013), <https://www.nigp.org/resource/position-papers/Best%2520Value%2520in%2520Government%2520Procurement%2520Position%2520Paper.pdf?dl=true> [<https://perma.cc/R8ZT-3Q2P>] [hereinafter NIGP, BEST VALUE]; see NAGLE, *supra* note 29, VOL 1 at 5; CHRISTOPHER R. YUKINS, GEO. WASH. L. SCH., THE U.S. FEDERAL PROCUREMENT SYSTEM: AN INTRODUCTION 79 (2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3063559 [<https://perma.cc/4NCY-BFPA>].

including protecting the public officials entering a government contract from “the demands of those who seek political favors.”²¹⁸ And second, the lowest bid method was intended to benefit taxpayers by delivering goods and services at the lowest responsible price.²¹⁹ In addition to these two reasons, the low bid process is often seen as faster and easier to administratively to implement than best value or other procurement approaches.²²⁰

In general, the low-bid procurement approach utilizes a sealed bidding process.²²¹ While the details vary by jurisdiction, a typical sealed process involves: (a) the development by an “invitation to bid” that describes the requirements or specification of the goods or services sought; (b) public advertisement or notice of this invitation to bid; (c) the submission of sealed bids by prospective vendors with their best and final offer by a specific deadline—and without knowledge of competing offers; (d) evaluation of the bids without consultation or negotiations with the vendors; and (e) the awarding of a final contract by the governmental body.²²²

Even though the competitive, low-bid approach has historically been viewed as “gospel,” it is also well-recognized that over-relying on this approach can lead to shortcomings with quality, reliability,

²¹⁸ Darrell W. Harp, *Historical Background – Low Bid Concept*, 386 TRANSP. RS CIRCULAR 43, 43 (1991) <https://onlinepubs.trb.org/Onlinepubs/trcircular/386/386-010.pdf> [<https://perma.cc/XR3L-RRZ6>]; see also Cummings & Janis, *supra* note 35, at 409 (2023) (“Federal statutes governing procurement are nearly as old as the U.S. government. Lawmakers in the early days of the Republic focused on combatting collusive behavior that wasted federal funds by requiring transparent and fair procedures in the award of public contracts.”).

²¹⁹ *Id.* at 43; see COMPETITIVE BIDDING UNDER GENERAL MUNICIPAL LAW § 103, *supra* note 212 at 1.

²²⁰ Harp, *supra* note 218, at 43; CONG. RSCH. SERV., DEFENSE PRIMER: LOWEST PRICE TECHNICALLY ACCEPTABLE CONTRACTS 1 (Aug. 15, 2024).

²²¹ CONWAY, *supra* note 211, at 64.

²²² See, e.g., 48 C.F.R. § 14.101 (2026) (federal elements of sealed billing); 2000 MODEL PROCUREMENT CODE § 3-202 (A.B.A. 2000) (model competitive sealed bidding process); COMPETITIVE BIDDING UNDER GENERAL MUNICIPAL LAW § 103, *supra* note 212, at 31–70.

durability and innovation.²²³ And in the context of public food procurement, commentators have also pointed out that the lowest bidder standard fails to account for the “externalities” such as the costs of environmental and climate pollution, the exploitation of workers, health care costs from diet-related disease, and the economic benefits of local sourcing.²²⁴

One way in which all levels of government have sought to provide flexibility in the lowest bidder process is through so-called price preferences or bid preferences. Indeed, as pointed out, the majority of states have established some type of price or bid preference when buying food from in-state farms and businesses.²²⁵ Additionally, determining what constitutes a “responsible” and or “responsive” bidder to a low-bid solicitation can allow for consideration of

²²³ See NIGP, BEST VALUE, *supra* note 217, at 1; Harp, *supra* note 218 at 43, 44, 46; František Ochrana and Kristýna Hrnčířová, *Does the Lowest Bid Price Evaluation Criterion Make for a More Efficient Public Procurement Selection Criterion? (Case of the Czech Republic)*, 8 NISPCEE J. PUB.ADMIN. & POL’Y 41, 56–57 (2015).

²²⁴ See, e.g., FOOD AND AGRIC. ORG. OF THE U.N., *supra* note 6, VOL. 1 at 287–88; FOOD AND AGRIC. ORG. OF THE U.N., VOL. 2, PUBLIC FOOD PROCUREMENT FOR SUSTAINABLE FOOD SYSTEMS AND HEALTHY DIETS, *supra* note 110 at 38, 95; (2021) DATA FOR PROGRESS, FOOD PROCUREMENT AND INFRASTRUCTURE 5 (June 2021), <https://www.filesforprogress.org/memos/food-procurement-and-infrastructure.pdf>; *The True Cost of Food*, CORNELL COLL. OF AGRIC. & LIFE SCIS., <https://cals.cornell.edu/food-systems-global-change/true-cost-of-food> [<https://perma.cc/74JX-VSRD>] (food “prices don’t reflect the cost of important and expensive externalities like greenhouse gas emissions, nutrition, and job creation associated with local food production”); see also Scott Cummings and Madeline Janis, *Reclaiming the Progressive Potential of Local Procurement*, LPE BLOG (Jan. 10, 2024), <https://lpeproject.org/blog/reclaiming-the-progressive-potential-of-local-procurement/> [<https://perma.cc/ASV5-ETGA>] (discussing how “the involvement of federal funding” in local procurement programs preempts “local policies that seek to attach conditions on contractors awarded public projects—like hiring local workers, paying livable wages, or agreeing to use clean fuel sources”).

²²⁵ See COLO. FOOD SYS. ADVISORY COUNCIL, *A 50-State Policy Scan on the Role of State Procurement Policy on Buying Colorado Food (2021)* at 8–10, 20–25; NIGP: INST. FOR PUB. PROCUREMENT, LOCAL PREFERENCE IN PUBLIC PROCUREMENT: THE IMPORTANCE OF BEST VALUE ANALYSIS WHEN GOVERNMENT HAS ADOPTED LOCAL PROCUREMENT PREFERENCES 1 (2015), <https://s3.us-east-1.amazonaws.com/nigp-prod-media/assets/resources/position-papers/Local%20Preference%20in%20Public%20Procurement%20Position%20Paper.pdf> [<https://perma.cc/7UGB-XZGP>].

non-cost criteria or “technical requirements” in food purchasing—such as food delivery and logistics, traceability and reporting, and food safety standards.²²⁶

Related to this, states and localities possess considerable legal authority to require vendors bidding for public contracts to comply with minimum food safety standards (e.g., setting pesticide residue limits, toxin prohibitions) through well-established “police powers.”²²⁷ There is even greater latitude for states and localities to require vendors to comply with nutrition standards—commonly considered a “values-based” criteria—for food purchased for schools and other public institutions.²²⁸ Additionally, localities that are recipients of U.S.D.A. monies can explicitly impose more stringent nutritional standards—that is, above baseline national standards²²⁹—for institutional food bought with those federal dollars.²³⁰

B. Best Value Procurement

The second primary method of government procurement is through the use of some form of “best value.” In simple terms, best value means consideration of purchasing factors in addition to

²²⁶ COMMON MARKET, ADVANCING SCHOOL FOOD PROCUREMENT: DRIVING VALUES-BASED PURCHASING THROUGH COMPETITIVE SOLICITATIONS 54 (Nov. 2022); CENTER FOR AGRICULTURE & FOOD SYSTEMS AND HEALTHY FOOD PROJECT, OPTIMIZING FOOD DISTRIBUTOR CONTRACTS TO ACHIEVE LOCAL FOOD PROCUREMENT TARGETS: CONSIDERATIONS FOR STATE AND LOCAL PUBLIC SECTOR ENTITIES 12 (May 2025); CHADWICK STEPHENS, NATIONAL ASSOCIATION OF STATE PROCUREMENT OFFICIALS 2-6 (May 2024).

²²⁷ JENNIFER L. POMERANZ ET AL., FOOD INGREDIENTS, STATE ACTIONS, AND FEDERAL PREEMPTION, JAMA E1-E2 (Feb. 11, 2026). This broad police power authority also extends to enacting food safety requirements for food served at restaurants and other private establishments. *Id.*; HARVARD L. SCH., FOOD LAW AND POLICY CLINIC, STATE REGULATIONS OF FOOD ADDITIVES AND CHEMICALS: PREEMPTION, THE COMMERCE CLAUSE, AND THE BREADTH OF STATE AUTHORITY 5 (Dec. 2025).

²²⁸ Pomeranz, *supra* note 227, at E2.

²²⁹ See *infra* Part V.B.

²³⁰ USDA, ENHANCING CHILD NUTRITION PROGRAM MEAL STANDARDS SP 15-205 (June 2, 2025); HARVARD, STATE REGULATIONS OF FOOD ADDITIVES 8-9.

simply price.²³¹ These factors can include the quality, qualifications, and reliability of the vendor, consideration of all costs through a life-cycle analysis, and assessment of possible delays and other risks.²³² There is no set definition of best value from jurisdiction to jurisdiction. And some state laws explicitly incorporate into their best value definitions preferences for certain key socio-economic values, such as favoring minority or women-owned businesses, or environmental values, such as buying goods that are less toxic or can reduce greenhouse gas emissions.²³³

The best value procurement process shares many similar characteristics to the lowest bidding approach, including development of selection criteria or requirements, adequate public notice, fair and open competition, and sometimes requiring sealed submissions. But in contrast to the lowest bidder process, best value purchasing often relies on issuing a Request for Proposals or RFP.²³⁴ While I discuss their legal implications in more detail below, in short, RFPs generally constitute a more complex solicitation document that allows the buying entity to evaluate and weigh different factors—including price—before making a final contract award.²³⁵ The process

²³¹ See CONWAY, *supra* note 211, at 189.

²³² NIGP, BEST VALUE, *supra* note 217, at 1–3; KEITH R. MOLENAAR & DANIEL TRAN, *Overview of Best Value Procurement*, in PRACTICES FOR DEVELOPING TRANSPARENT BEST VALUE SELECTION PROCEDURES, 7, 7 (2015); Douglas D. Gransberg & Michael Ellicott, *Best Value Contracting Criteria*, 39 J. ASS'N FOR ADVANCEMENT OF COST ENG'G INT'L 31, 32 (1997); Brian C. Lines, Raghu Karapalli & Phuong H.D. Nguyen, *Does Best Value Procurement Cost More than Low-Bid? A Total Project Cost Perspective*, INT'L J. CONSTR. 18 EDUC. AND RSCH. 85, 87 (2020).

²³³ See, e.g. N.Y. STATE FIN. LAW § 163(1)(J) (McKinney 2025) (providing an example of New York State laws favoring social and environmental initiatives); ILL. ADMIN. CODE tit. 44, § 4 (2033), <https://www.law.cornell.edu/regulations/illinois/Ill-Admin-Code-tit-44-SS-4.2033%5b> [<https://perma.cc/WY93-S78S>].

²³⁴ See CONWAY, *supra* note 211, at 189. In addition to RFPs, government agencies also utilize other similar methods in soliciting proposals such as invitations to negotiate, requests for qualifications, requests for information. See *id.* at 84; US GSA, HOW TO RESPOND TO PRE-AWARD NOTICES: KNOWING THE DETAILS, <https://www.gsa.gov/system/files/Pre-Award%20Notices%20-%20508%20-%2008272021.pdf> [<https://perma.cc/D7XH-H2L8>].

²³⁵ NY GOVBUY, A GUIDE TO RFPs FOR PROCUREMENT PROFESSIONALS 9 (May 4, 2022), <https://ogs.ny.gov/system/files/documents/2022/05/2022-22-a-guide-to-rfps-for-procurement-professionals.pdf>; NIGP, THE INSTITUTE FOR PUBLIC

sometimes allows agencies or governmental bodies to interview vendors, ask them to clarify aspects of their proposals and negotiate terms and final prices.²³⁶

The use of best value procurement methods, or similar methods that consider more than price, emerged in response to the limitations of the lowest bidder approach.²³⁷ At least at the federal level in the United States, this development can be traced back to as early as 1972 when Congress enacted the Brooks Architect-Engineers Act.²³⁸ This Act regulates the federal government's procurement of architectural and engineering services based only on the qualification of firms bidding on the project.²³⁹ When applying this "qualification-based selection," an agency solicits statements from contractors about their qualifications, selects the most qualified, and then negotiates the price with that contractor.²⁴⁰ Since that time, the use

PROCUREMENT, PRINCIPLES AND PRACTICES FOR PUBLIC PROCUREMENT, REQUEST FOR PROPOSALS (RFP) 1, <https://www.nigp.org/resource/global-best-practices/request-for-proposals-global-best-practice.pdf?dl=true>.

²³⁶ See PRINCIPLES AND PRACTICES FOR PUBLIC PROCUREMENT, *supra* note 235, at 1; CONWAY, *supra* note 211, at 101–103; *see generally* KAILEY B. AYOGU & ELENA HOFFNAGLE, PARTNERS FOR PUB. GOOD, GUIDEBOOK: CRAFTING A RESULTS-DRIVEN REQUEST FOR PROPOSALS (RFP) 2025), <https://partnersforpublicgood.org/procurement-excellence-network/wp-content/uploads/sites/2/2022/12/Guidebook-Crafting-a-Results-Driven-Request-for-Proposals.pdf> [<https://perma.cc/EST6-FRDB>].

²³⁷ See NIGP, BEST VALUE, *supra* note 217, at 1; Gransberg & Ellicott, *supra* note 232, at 31–33, <https://doi.org/10.1080/15578771.2020.1777489>; Lines et al., *supra* note 232, at 4.

²³⁸ NIGP, Best Value, *supra* note 217 at 1; John Palatiello, *Celebrating the 50th Anniversary of the Brooks Act*, XYHT MAG. (Oct. 27, 2022), https://www.xyht.com/surveying/celebrating-the-50th-anniversary-of-the-brooks-act/?utm_source=chatgpt.com [<https://perma.cc/K9SX-X3WW>].

²³⁹ See 40 U.S.C. § 1101 et seq., <https://www.law.cornell.edu/us-code/text/40/1101> [<https://perma.cc/RMH9-WK72>].

²⁴⁰ See *id.* at 599 (citing 40 U.S.C. § 1103, 1104(b)); The earliest mention of "best value procurement" in caselaw appears to be a 1990 federal court case in Pennsylvania, where a disappointed bidder on a contract for computer management and support services at a naval air development center brought action against the successful bidder and the Secretary of Navy. *Applications Rsch. Corp. v. Naval Air Dev. Ctr.*, 752 F. Supp. 660, 680 (E.D. Pa. 1990).

of best value at the federal level has become a central tenet of public contracting. For example, under the Office of Federal Procurement Policy Act, first enacted in 1974, federal public contract law now requires the Chief Acquisition Officers Council to “[p]romote effective business practices that ensure the timely delivery of best value products to the Federal Government and achieve appropriate public objectives.”²⁴¹ Further, the Chief Acquisition Officer is given the responsibility to “ensure that the executive agency receives a sufficient number of sealed bids or competitive proposals from responsible sources to fulfill the Federal Government’s requirements . . . at the lowest cost or best value.”²⁴² The Federal Acquisition Regulations (“FAR”), the primary set of rules governing purchasing by all executive agencies, defines best value as “the expected outcome of an acquisition that, in the Government’s estimation, provides the greatest overall benefit in response to the requirement.”²⁴³ It further describes how best value can be a continuum, stating that “an agency can obtain best value in negotiated acquisitions by using any one or a combination of source selection approaches.”²⁴⁴

Another federal statute that incorporates best value provisions is the Secure Rural Schools and Community Self-Determination Act of 2000, which provides funding for rural schools and roads.²⁴⁵ Under this Act, the federal government (via the U.S.D.A. or the Department of the Interior) may elect a source for performance of the contract on a best value basis” and “shall determine best value based on” factors including “the ecological objectives of the project,” “the

²⁴¹ Act of Jan. 4, 2011 Pub. L. No. 111-350 § 1312(b)(4) (Codified as amended at 41 U.S.C. § 1312(b)(4)).

²⁴² *Id.* § 1702 (b)(3)(B).

²⁴³ See FAR 48 C.F.R. § 2.101 (2025); see also FAR 48 C.F.R. § 1.102 (2025) (“The vision for the Federal Acquisition System is to deliver on a timely basis the best value product or service to the customer, while maintaining the public’s trust and fulfilling public policy objectives.”).

²⁴⁴ FAR 48 C.F.R. § 15.101; see also FAR 48 C.F.R. §§ 15.303 and 52.215-1(f); and 2 C.F.R. § 200.320(b)(2) (2026) (federal agency procurement methods); Yukins, *supra* note 217, at 82 (noting that roughly 39% of federal procurement awards in fiscal year 2014 were via “negotiated proposals” versus only 2% for “sealed bidding”)

²⁴⁵ See 16 U.S.C. § 7101; Secure Rural Schools and Community Self-Determination Act of 2000, Pub. L. No. 106-393, 114 Stat. 1617.

sensitivity of the resources being treated” and “the past experience by the contractor with the type of work being done, using the type of equipment proposed for the project, and meeting or exceeding desired ecological conditions.”²⁴⁶ And to cite one more example, the Healthy Forests Restoration Act of 2003, which aims to benefit the nation’s forest ecosystem, provides that where the Interior Department (via the Forest Service and Bureau of Land Management) enters into “stewardship contracting projects” to meet “land management goals,” any such agreement or contract “shall be selected on a best-value basis.”²⁴⁷

At the state level, there is no comprehensive listing of state or local best value procurement provisions. But one resource, by the National Association of State Procurement Officials, does track best value procurement definitions for the 50 states.²⁴⁸ And according to a recent survey by the Center for Good Food Purchasing, all 18 states that the Center researched in conjunction with the Food Law and Policy Clinic at Harvard Law School, and the UCLA School of Law’s Resnick Center for Food, Law and Policy, allowed the best value method for some type of state or municipal procurement process.²⁴⁹

C. State Authority for Local Values Based Food Purchasing

This article is not intended to provide a comprehensive analysis of how laws in all 50 states govern local procurement of goods and services, including food—that would be quite a Herculean task. It also does not examine procurement and policies governing state and county agencies. Instead, this section will briefly highlight the statutory scheme of several key states where there are existing good food purchasing programs operating at the city level—as

²⁴⁶ See 16 U.S.C. § 7124(e)(2).

²⁴⁷ See 16 U.S.C. § 6591c(b), (d).

²⁴⁸ See *Best Value Procurement*, NAT’L ASS’N OF STATE PROCUREMENT OFFS., <https://www.naspo.org/research-and-innovation/rosp-category/best-value-procurement/> [https://perma.cc/MDY8-8BH3].

²⁴⁹ CTR. FOR GOOD FOOD PURCHASING, *VALUES BASED PURCHASING: A GUIDE TO BEST VALUE PURCHASING IN PUBLIC INSTITUTION* (2024).

highlighted above. My aim is to examine some of the primary procurement laws in these states as applicable to municipalities—or at least some municipalities—as a way of offering insight on the complexity of determining the food purchasing statutes and regulations, the need to analyze case law interpreting those provisions, and where there might be flexibility in those state laws to consider values-based food standards. Importantly, this high-level overview is not intended to be exhaustive or a legal guide for procurement officials and advocates in those jurisdictions—and it does not cover many of the special exceptions (e.g., emergency, sole source, piggybacking, specialized skills) that might affect the purchasing of food, general goods and services, and public works projects. In contrast, in the next section, Part V.D., I provide a much more detailed and comprehensive analysis of New York State’s procurement scheme governing municipalities.²⁵⁰

1. California

California’s Constitution grants cities organized under a “charter”—similar to a local constitution—with broad authority over “municipal affairs,” subject to limits by federal law and the state Constitution.²⁵¹ Thus, a charter city’s law regarding municipal affairs takes precedent over a state law governing the same topic.²⁵² As of 2024, 126 of California’s 482 cities were “charter cities,” including Los Angeles, San Francisco, and San Diego.²⁵³ The state government, however, retains control over matters of “statewide

²⁵⁰ This section benefitted from research and analysis completed by the Food Law and Policy Clinic of Harvard Law School, under the supervision of Emma Scott. The conclusions presented are solely attributable to me.

²⁵¹ See CAL. CONST. ART. XI, §§ 3(a), 5(a).

²⁵² See *Howard Contracting, Inc. v. G. A. MacDonald Constr. Co.*, 83 Cal. Rptr. 2d 590, 596 (Cal. Ct. App. 1998) (“The ‘home rule’ doctrine grants precedence to a city charter or municipal enactment over a conflicting state statute purporting to regulate a municipal matter.”); *Charter Cities: A Quick Summary for the Press and Researchers*, CAL. LEAGUE OF CITIES, <https://www.cacities.org/UploadedFiles/LeagueInternet/03/0384277b-0e15-4421-b252-052b3f5c5dcc.pdf> [<https://perma.cc/AFS7-LP28>].

²⁵³ Kota Suzuki, *Charter Cities are Gaining Popularity in California, but Voters are Worried about New Taxes*, S.F. Chron. (Nov. 20, 2024), <https://www.sfchronicle.com/california/article/charter-city-tax-voters-19907027.php> [<https://perma.cc/KQ89-TAT9>].

concern.”²⁵⁴ The courts also decide on a case-by-case basis if a given legal activity is a municipal affair or statewide concern.²⁵⁵ And it does not appear that the courts in California have determined whether local food procurement—and other types of city purchasing—is clearly a municipal affair, and if so, to what degree.²⁵⁶ Non-charter cities in California are considered “general law” cities and are bound by the state’s general law, including municipal affairs.²⁵⁷ Thus, as a first step of analysis, determining what laws govern procurement in California hinges on whether a city is a charter or general city, and if a charter city, what can be defined as a “municipal affair.”

Overall, California’s primary state procurement law, the Public Contract Code (“PCC”), seeks to clarify competitive bidding requirements, prevent the misuse of public funds, and stimulate competition—in addition to covering provisions governing both state and local agencies.²⁵⁸ The PCC applies to the non-Charter cities in California, and those charter cities that have not expressly opted out of specific PCC provisions.²⁵⁹ With respect to “public agencies”—

²⁵⁴ See *California Fed. Savings & Loan Assn. v. City of Los Angeles*, 812 P.2d 916, 918 (Cal. 1991); see *S.D. Myers, Inc. v. City and Cnty. of San Francisco*, 253 F.3d 461, 474 (9th Cir. 2001); see *Perry v. Schwarzenegger*, 630 F.3d 898, 905 (9th Cir. 2011).

²⁵⁵ *Sonoma Cnty. Org. of Pub. Emps. v. Cnty. of Sonoma*, 591 P.2d 1, 12 (Cal. 1979) (finding that “what constitutes a strictly municipal affair is often a difficult question; ultimately it is an issue for the courts to determine.”).

²⁵⁶ See *First St. Plaza Partners v. City of Los Angeles*, 76 Cal. Rptr. 2d 626, 632 (Cal. Ct. App. 1998) (finding that the specific manner of formation of city contracts is generally a “municipal affair”). *But see Domar Elec., Inc. v. City of Los Angeles*, 48 Cal. Rptr. 2d 822, 829 (Cal. Ct. App. 1995) (finding that “where there is doubt as to whether a matter is truly a municipal affair, such doubt must be resolved in favor of the legislative authority of the state”). Also note that state regulations indicate that a charter city should follow the applicable charter procurement requirements. CAL. CODE REGS. tit. 2, § 1895.2.

²⁵⁷ See *Charter Cities: A Quick Summary for the Press and Researchers*, *supra* note 252..

²⁵⁸ See CAL. PUB. CONT. CODE § 100 (Deering 2026).

²⁵⁹ CAL. PUB. CODE CONT. § 1100.7 (Deering 2026).

which includes cities and counties—the PPC recommends that: “If all bids received are in excess of two hundred twenty thousand dollars (\$220,000),” then the public agency “may, by adoption of a resolution by a four-fifths vote, award the contract, at two hundred thirty-five thousand dollars (\$235,000) or less, to the lowest responsible bidder, if it determines the cost estimate of the public agency was reasonable.”²⁶⁰ To cite another provision, the PCC requires cities and other defined political subdivisions to use the lowest responsible bidder for any “public project” (e.g., construction, repair, painting of publicly owned facilities) above \$5,000.²⁶¹

With respect to school systems, California courts have consistently classified school systems as a “matter of general concern rather than a municipal affair,” such as in cases on school employee classification, employee compensation, and the levying of taxes for school purposes.²⁶² And as a baseline requirement, the PCC states that school districts purchasing any “materials or supplies” for over \$50,000 must award contracts to the lowest responsible bidder.²⁶³ In addition to the lowest bid requirement, the PCC requires that school districts operating federally-funded nutrition programs must—in addition to meeting federal procurement rules—award contracts “to the most responsive and responsible party” and where “price shall be the primary consideration, but not the only determining factor.”²⁶⁴ The PCC also requires “local educational agencies” to purchase California-grown agricultural food products when both “the

²⁶⁰ CAL. PUB. CONT. CODE § 22034(d) (Deering 2026). These statutory recommendations only become binding if a public agency “elect[s] to become subject to uniform construction cost accounting procedures” set forth earlier in the PCC. CAL. PUB. CONT. CODE § 22030 (Deering 2026).

²⁶¹ CAL. PUB. CONT. CODE §§ 20162, 22002 (Deering 2026). In 2015, the California Legislature established a 5 year pilot program to allow the Los Angeles Unified School District to use best value procurement for building and facility modernization projects over \$1,000,000. *See* 2015 Cal. Stat. ch. 786 (A.B. 1185). In 2025, this best value procurement pilot was extended under California law to all school districts for projects over \$1,000,000, and is applicable until the end of 2030. *See* 2025 Cal. Stat. ch. 144 (A.B. 361).

²⁶² *See e.g.* Whisman v. S.F. Unified Sch. Dist., 160 Cal. Rptr. 548, 550 (Cal. Ct. App. 1978); Esberg v. Badaracco, 259 P. 730, 732 (Cal. 1927); Butterworth v. Boyd, 82 P.2d 434, 440 (Cal. 1938).

²⁶³ CAL. PUB. CONT. CODE § 20111(a) (West 2018).

²⁶⁴ CAL. PUB. CONT. CODE § 20111(c) (West 2018).

bid or price of the California-grown agricultural food product does not exceed the lowest bid or price for a domestic agricultural food product produced outside the state,” and the “quality of the California-grown agricultural food product is comparable to that domestic agricultural food product produced outside the state.”²⁶⁵

Although not a provision relating to municipalities, it is worth noting that the PCC allows the University of California system to use “best value” procurement for certain purchases. Specifically, they can select bidders for goods, materials, or services based on “best value” to the University, which involves “long-term savings through the use of life-cycle cost methodology, the use of more sustainable goods and materials, and reduced administrative costs.”²⁶⁶

To add another layer of complexity, the Los Angeles Administrative Code (“LAAC”), with similar requirements to the PCC, requires that contracts should be awarded to the “lowest responsible bidder providing satisfactory security for its performance.”²⁶⁷ The LAAC also has an Environmentally Preferable Purchasing Program, which promotes “the use of environmentally preferable products in its acquisition of goods and services.” This program instructs the City of Los Angeles to consider environmental factors such as “pollutant releases, waste generation, recyclability, recycled content, energy consumption, depletion of natural resources and potential impact on human health and the environment.”²⁶⁸ The LAAC also provides a non-exhaustive list of applicable products that does not currently include food or agricultural products.²⁶⁹

In short, there is a patchwork of complicated state and local laws in California governing procurement that, in general, track the lowest responsible bidder process. At the same time, state law

²⁶⁵ CAL. PUB. CONT. CODE § 58595(c); Local Education Agencies are defined in this provision of the PCC as “a school, school district, county office of education, or charter school” pursuant to CAL. EDUC. CODE § 49557.5 (West 2024).

²⁶⁶ CAL. PUB. CONT. CODE § 10507.8 (West 2019).

²⁶⁷ L.A., CAL ADMIN. CODE § 10.15(f).

²⁶⁸ L.A. CAL. CHARTER art. 6, § 10.32.

²⁶⁹ L.A. CAL. CHARTER art. 6, § 10.32.4.

allows school districts participating in federal nutrition programs some discretion to take into account other factors when awarding food contracts. And charter cities like LA may have the legal ability to adopt values-based purchasing rules, absent any conflict with current or future state law. Still, it remains difficult to determine with any degree of certainty which laws specifically govern local public food purchasing in LA and other cities in that state—and again, it can depend on whether the city it is a charter city and what local procurement laws have been enacted. LA also did not cite any specific legal authority when it adopted its GFPP in 2012. Thus, it is fair to conclude that California state law could be significantly clarified to provide explicit legal power for local governments to incorporate values-based standards in their food purchases.

2. Colorado

Like California, Colorado's Constitution allows for the creation of home rule cities.²⁷⁰ As of 2023, 105 of the 273 municipalities in Colorado are home rule jurisdictions, including the City (and County) of Denver.²⁷¹ Also like California, home rule cities in Colorado possess significant authority over local or municipal affairs.²⁷² And the courts there similarly assess if a matter should be considered a local, statewide, or mixed state and local concern.²⁷³

But unlike California and many other states, Colorado's state procurement laws do not establish baseline requirements for municipal governments.²⁷⁴ Instead, "political subdivisions and local

²⁷⁰ COLO. CONST. art. XX, § 6, art. XIV, § 16.

²⁷¹ *The Colorado Municipal League and Home Rule*, COLORADO MUNICIPAL LEAGUE, <https://cmlresource.com/century-of-service/story-two/> [<https://perma.cc/NXD3-XZMY>] (last visited Apr. 25, 2026); *Municipal Membership*, COLORADO MUNICIPAL LEAGUE, <https://www.cml.org/utility-pages/cml-member-directory> [<https://perma.cc/R643-KM5Y>] (last visited Apr. 25, 2026).

²⁷² *City & Cnty. of Denver v. State*, 788 P.2d 764, 767 (Colo. 1990); Legislative Council Staff, Issue Brief, Number 20-16 (May 2020) https://content.leg.colorado.gov/sites/default/files/r20-540_issue_brief_on_home_rule_charters.pdf.

²⁷³ *City & Cnty. of Denver v. State* at 767.

²⁷⁴ See generally COLO. REV. STAT. § 24 (2024); see also *Colorado Procurement Code: Rules, Contracts, and Exemptions*, LEGAL CLARITY COLO. (Feb. 26, 2025),

<https://legalclarity.org/colorado-procurement-code-rules-contracts-and-exemptions> (overview of Colorado's procurement code).

public agencies” have the option of adopting any or all of the state’s procurement code.²⁷⁵ With respect to public schools, Colorado’s Supreme Court has ruled that the “general supervision” of such schools is a state matter and includes the “direction, inspection, and critical evaluation of Colorado’s public education system from a statewide perspective.”²⁷⁶ But case law does not indicate whether this includes school food procurement. Separately, there is a provision of state law that allows municipal agencies utilizing an “integrated project delivery” method of procurement—that is, a multi-team collaborative approach—for “public projects” (e.g., infrastructure projects) to “provide for selection of a proposal on that basis other than solely the lowest costs estimates submitted” and “accept the proposal that, in its estimation, represents the best value to the agency.”²⁷⁷

In Denver, the city municipal code establishes the default of “lowest qualified, responsive, and responsible bidder,” but in the same clause, also allows for “requests for proposals” to be awarded to the “most qualified, responsive, responsible proposer whose proposal represents the best value to the city.”²⁷⁸ Best value is defined by the city’s code as “price and other valid predetermined evaluation criteria” representing the “overall combination of quality, price, and various elements of required services that are in total optimal relative to the city’s needs.”²⁷⁹ The city law specifies that “determination of the most qualified proposer shall be made upon predetermined evaluation criteria and price which may be weighted on a numeric or percentage basis according to the requirements of the specific proposal or in some other predetermined manner as stated in the proposal.”²⁸⁰

²⁷⁵ COLO. REV. STAT. ANN. § 24-101-105(2); *see also Colorado Procurement Code, supra* note 274 (noting that “[l]ocal governments, including counties, municipalites, and special districts, may voluntarily opt it” to the Colorado Procurement Code).

²⁷⁶ Bd. of Educ. of Sch. Dist. No. 1 in *City & Cty. of Denver v. Booth*, 984 P.2d 639, 648 (Colo. 1999).

²⁷⁷ COLO. REV. STAT. ANN. § 31-25-1306.

²⁷⁸ Denver, Rev. Mun. Code § 20—62 (2025).

²⁷⁹ Denver, Rev. Mun. Code § 20—61(b) (2025).

²⁸⁰ *See* Denver, Rev. Mun. Code § 20—62.5 (2025).

In sum, Colorado does not require municipalities to follow state procurement codes, except where they opt-in. And, at least in Denver, purchasing officers appear to have leeway to incorporate GFPP-type criteria into their contracting as long as they are predetermined and connected to the city's needs. However, there appears to be no relevant case law on these provisions of Denver municipal code.

3. Illinois

Illinois is also a home rule state.²⁸¹ As of 2024, 224 of the nearly 1,300 municipalities in Illinois have home rule authority, including the City of Chicago.²⁸² In Illinois, Home Rule municipalities do not have to abide by state statutes, absent a showing of clear legislative intent.²⁸³ But the Illinois Code ("IC") does require that municipalities with a population above 500,000—which would include Chicago—award contracts to the "lowest responsible bidder" for the purchase of supplies above \$10,000.²⁸⁴ In determining the lowest responsible bidder, Illinois allows consideration of factors such as "past records of transactions with the bidder, experience, adequacy of equipment, ability to complete performance within a specified time limit and other pertinent considerations."²⁸⁵ Furthermore, any bids may be rejected if the character or quality of the supplies does not conform to requirements or "if the public interest may otherwise be served thereby."²⁸⁶ And Illinois case law in general

²⁸¹ ILL. CONST. art. VII, § 6(a).

²⁸² See ILLINOIS MUNICIPAL LEAGUE, *Home Rule Municipalities* (Dec. 17, 2024), <https://www.iml.org/homerule-municipalities?> [<https://perma.cc/JGW4-8LMP>].

²⁸³ See *Soc. Bicycles LLC v. City of Chicago Dep't of Transp.*, 435 F. Supp. 3d 933, 945–46 (N.D. Ill. 2020).

²⁸⁴ 65 ILL. COMP. STAT. 5/8-10-2 (1961); 65 ILL. COMP. STAT. 5/8-10-3 (2003); Note that municipalities with fewer than 500,000 inhabitants must award "any work or other public improvement" contract greater than \$25,000 "to the lowest responsible bidder" or through a vote of two-third of all "alderpersons or trustees" in office. 65 ILL. COMP. STAT. 5/8-9-1 (2021). Additionally, the IC indicates that counties with a population over 2,000,000 inhabitants – only Cook County – are not subject to any state competitive bidding requirements. 55 ILL. COMP. STAT. 5/5-1022. See also *Am. Health Care Providers, Inc. v. Cnty. of Cook*, 638 N.E.2d 772, 781 (1994) (holding that Cook County's health care contracts are not subject to the competitive bidding requirements).

²⁸⁵ 65 ILL. COMP. STAT. 5/8-10-11 (1961).

²⁸⁶ 65 ILL. COMP. STAT. 5/8-10-12 (1961).

provides flexibility to public agencies in applying the lowest bidder requirement.²⁸⁷

Additionally, the Illinois Code requires that all school contracts above \$35,000 must be awarded to the lowest responsible bidder.²⁸⁸ However, this explicitly excludes contracts for the purchase of “perishable foods and perishable beverages.”²⁸⁹ And in 2022, Illinois enacted a significant reform to the state’s procurement laws that also authorizes school districts to buy food that meets certain GPPP-type values without adherence to the lowest bidder approach. Specifically, the state law was changed to allow school districts, as long a “good faith effort” is made, to give preference to food contracts that promote the health and well-being of students, support state or regional suppliers, value animal welfare, and increase opportunities for businesses owned and operated by minorities, women, or person with disabilities.²⁹⁰ The new law also requires vendor to provide annual data to verify compliance with these preferences.²⁹¹

Referencing the IC, the City of Chicago’s Municipal Code also requires that the City’s chief procurement officer must award competitively bid contracts to the lowest “responsive and responsible

²⁸⁷ See e.g., *Best Bus Joint Venture v. Bd. of Educ. of City of Chicago*, 681 N.E.2d 570, 78 (1997) (“[T]he law is clear that a public body possesses great discretion in determining the lowest responsible bidder. Financial responsibility and ability to perform are not the only relevant factors. A contract may be awarded to a higher bidder, ‘where this is done in the public interest, in the exercise of discretionary power granted under the laws, without fraud, unfair dealing or favoritism and where there is sound and reasonable basis for the award as made.’” (internal citation omitted); see also *Joseph J. Henderson & Son, Inc. v. City of Crystal Lake*, 743 N.E.2d 713, 716–17 (Ill. App. Ct. 2001).

²⁸⁸ 105 ILL. COMP. STAT. 5/10-20.21(a) (2024).

²⁸⁹ *Id.* at 5/10-20.21(a)(iv).

²⁹⁰ *Id.* at 5/10-20.21(a)(xvii). The Illinois State Board of Education has published guidance on this new bill. ILLINOIS STATE BOARD OF EDUCATION, PASSAGE OF HOUSE BILL 4813 – PROCUREMENT OPTIONS (n.d.).

²⁹¹ 105 ILL. COMP. STAT. 5/10-20.21(a)(xvii) (“Food supplier data shall be submitted to the school district at the time of the bid, to the best of the bidder’s ability, and updated annually thereafter during the term of the contract. The contractor shall submit the updated food supplier data. The data required under this item (xvii) shall include the name and address of each supplier, distributor, processor, and producer involved in the provision of the products that the bidder is to supply.”).

bidder,” though they can choose the next lowest responsive and responsible bidder if the initially selected bidder’s “performance is insufficient for the city’s needs.”²⁹² Additionally, the City’s Municipal Code includes various “price preferences” (0.5 to 6 %) for certain types of bidders, including project-area subcontractors,²⁹³ city-based manufacturers,²⁹⁴ diverse management and workforce,²⁹⁵ veteran-owned subcontractors,²⁹⁶ and alternative fuel vehicles.²⁹⁷ The City’s codes also set forth minimum percent contract requirements for project-area residents,²⁹⁸ and goals for utilizing minority-owned and women-owned businesses.²⁹⁹

In short, even in a strong home rule state, Illinois state law code establishes a baseline lowest responsible bidder requirement for most municipal contracts. At the same time, the IC and case law provide some discretion to award contracts that are not the lowest bid. Further, as of 2022, Illinois state law provides significant latitude to school districts to buy food that incorporates GFPP-related standards. Moreover, while Chicago’s Municipal Code generally requires the awarding of contracts to the lowest responsible bidder, it has created a strong precedent of utilizing price preferences to advance social, economic and environmental goals. Thus, while the City’s 2017 resolution adopting the GFPP does not cite any specific legal authority,³⁰⁰ Chicago appears to possess sufficient legal flexibility to advance values-based food procurement at least within the school system.

²⁹² CHI., ILL., MUN. CODE § 2-92-617(a) (2025).

²⁹³ See CHI., ILL., MUN. CODE § 22-92-405 (2015).

²⁹⁴ See CHI., ILL., MUN. CODE § 2-92-410 (2015).

²⁹⁵ See CHI., ILL., MUN. CODE § 22-92-407 (2018).

²⁹⁶ See CHI., ILL., MUN. CODE § 2-92-940 (2017).

²⁹⁷ See CHI., ILL., MUN. CODE § 2-92-413. For a description of all the procurement incentives see CITY OF CHI. DEP’T OF PROCUREMENT SERVS., INCENTIVES AND PROGRAMS RESOURCE GUIDE, https://www.chicago.gov/content/dam/city/depts/dps/Outreach/ResourceGuides/DPS%20Incentives%20and%20Programs%20Resource%20Guide_May2025.pdf [<https://perma.cc/BA52-LKKY>].

²⁹⁸ See CHI., ILL., MUN. CODE § 2-92-330 (2013).

²⁹⁹ See CHI., ILL., MUN. CODE § 2-92-430 (2000).

³⁰⁰ See Res. 2017-727, Office of the Mayor, City of Chicago, Ill. 2017).

4. Massachusetts

Under Massachusetts' Constitution, cities and towns, via local ordinances or by-laws, broadly possess any "power or function" that is not inconsistent with the state's constitution or laws.³⁰¹ Additionally, the Massachusetts state legislature grants to towns the power to "make such ordinances and by-laws, not repugnant to law, as they may judge most conducive to their welfare which shall be binding upon all inhabitants thereof and persons within their limits."³⁰² According to the state's highest court, city can act under these two "home rule provisions" as long as it "is not 'inconsistent' with State laws or the Constitution."³⁰³ Further, in determining whether local law is inconsistent with any laws enacted by State Legislature, the courts will analyze whether there is some express legislative intent to forbid the activity, whether the activity would frustrate the purpose of the state law, or whether there is a "sharp conflict" between the state law and the city action.³⁰⁴

In Massachusetts, the Uniform Procurement Act ("UPA") governs procurement and explicitly applies to all "governmental bod[ies]" defined to include "a city, town, district, regional school district, county, or agency, board, commission, authority, department or instrumentality of a city, town, district, regional school district or county."³⁰⁵ And at a broad level, this code operates largely based on the lowest responsible bidder model.³⁰⁶ Under the UPA, for the procurement of a supply or service for a government body between \$10,000 and \$50,000, or by a municipal or regional school district between \$10,000 and \$100,000, the procurement officer must award the contract to the "responsible person offering the needed quality of supply or service at the lowest quotation."³⁰⁷ Under the UPA competitive bidding procedures, the procurement officer must evaluate bids based solely on the written criteria, which

³⁰¹ MASS. CONST. art. LXXXIX § 6.

³⁰² MASS. GEN. LAWS ch. 40 § 21.

³⁰³ *Connors v. City of Boston*, 430 Mass. 31, 35 (1999).

³⁰⁴ *Id.* at 35–36.

³⁰⁵ MASS. GEN. LAWS ch. 30B § 2.

³⁰⁶ MASS. GEN. LAWS ch. 30B et. seq.

³⁰⁷ MASS. GEN. LAWS ch. 30B § 4(a) & (b).

must include standards by which the procurement officer will determine acceptability as to quality, workmanship, results of inspections and tests, and suitability for a particular purpose.³⁰⁸

But there are several significant exceptions from these general requirements that are directly applicable to buying more “good food.” One carveout from the general lowest bidder requirement is for procurement contracts with Massachusetts farm operations for individual purchases of less than \$35,000 for agricultural products including “fruits, vegetables, eggs, dairy products, meats, crops, horticultural products and products processed into value added products, that are grown or produced using products grown in the commonwealth as well as fish, seafood and other aquatic products,” as long as the procurement officer “follows sound business practices” in awarding such contracts.³⁰⁹

In another section, the state law permits a procurement officer to consider additional evaluation criteria and award the contract to the “most advantageous proposal from a responsible and responsive offeror” considering both price and the additional evaluation criteria.³¹⁰ This non-competitive sealed bid process—via “requests for proposals”—is permissible for procurement contracts exceeding \$50,000 for governing bodies and \$100,000 for municipal or regional school districts, and only where the procurement officer has determined in writing that selection of the most advantageous offer “requires comparative judgments of factors in addition to price” and has stated his specific reasons for making this judgement.³¹¹ Beyond these general procurement provisions, a separate section of the UPA permits local government bodies to establish a preference for products of agriculture—including but not limited to fruits, vegetables, eggs, dairy, and meats—grown, or produced using products grown, in the state.³¹² This provision permits a 10% price preference for locally grown food.³¹³

³⁰⁸ MASS. GEN. LAWS ch. 30B § 5C.

³⁰⁹ *Id.* § 4(d).

³¹⁰ See *id.* § 6(a), (b)(2) & (g).

³¹¹ *Id.* § 6(a).

³¹² MASS. GEN. LAWS ch. 30B § 20.

³¹³ *Id.* at (b). There is a Massachusetts state law that permits procurement to be conducted on the “best value” model, but it only applies to public construction projects. See MASS. GEN. LAWS ch. 149A § 20 (“Pursuant to this section the

In short, although narrow, there are several UPA sections that could provide legal authority for at least some of Boston's 2019 GFPP Ordinance. This includes the "most advantageous proposal" RPF provision and the 10% price preference for local food. But like most state procurement laws around the nation, there is little case law interpreting these provisions.³¹⁴

D. N.Y.S. General Municipal Law

New York State is also a Home Rule state that has given local governments significant authority to exercise self-government under its Constitution.³¹⁵ New York's protections for local governments are also more extensive than many other states.³¹⁶ The "Municipal Home Rule Clause" in the New York Constitution grants localities considerable leeway to regulate local issues.³¹⁷ But at the same time, even where there is considerable "home rule" powers at the local level, the state retains the power to regulate a "substantial state interest" or a "matter of state concern"—such as taxation, education, water supply and banking.³¹⁸ The doctrine of "matter of

awarding authority may evaluate and select proposals on either a best-value or low-bid basis.").

³¹⁴ One relevant case is *Edwards v. City of Boston*, a 1990 case from the Supreme Judicial Court of Massachusetts that ruled that the UPA applies to the City of Boston, and that the city cannot conduct procurement in a way that violates the Act's provisions. *Edwards v. City of Boston*, 408 Mass. 643, 653 (Sup. Jud. Ct. of Mass. Nov. 12, 1990). Another case worth noting, from 1998, is *North Suburban Transportation, Inc. v. City of Woburn School Committee*. In this case, the Superior Court of Massachusetts determined that under the UPA (§ 5) the City of Woburn was permitted to award a bus contract to a "higher bidder" where the losing lowest bidder was determined not be "reliable and responsible" under the city's written bid requirement that bus companies do not have prior history of stop work orders. *North Suburban Trans., Inc. v. City of Woburn Sch. Comm.* 1998 WL 1284165 (Sup. Ct. Mass. May 15, 1998).

³¹⁵ See N.Y. STATE BAR ASS'N COMM. ON THE N.Y. STATE CONST., REPORT AND RECOMMENDATIONS CONCERNING CONSTITUTIONAL HOME RULE 1-2, 6-8, 31 (2016).

³¹⁶ See *id.* at 2.

³¹⁷ *Greater New York Taxi Assn v. State*, 21 NY 3d 289, 300 (2013).

³¹⁸ *Id.* at 302; *County of Onodaga v. New York State* [slip op at 6]; NEW YORK DEP'T OF STATE, ADOPTING LOCAL LAW IN NEW YORK STATE 6 (2024),

state concern” grew out of caselaw, as opposed to the Constitution or statutes.³¹⁹ And as recently stated by New York’s highest court, the Court of Appeals, the State Legislature has “untrammelled primacy . . . to act . . . with respect to matters of State concern.”³²⁰ Related to this, local laws can be pre-empted where a state law clearly is intended to override such local regulation or occupy the subject matter at issue.³²¹

With respect to procurement, since at least the mid-19th century local governments in New York have been required to follow state-imposed laws governing competitive purchasing processes.³²² Prior to 1953, there were different and inconsistent state statutes governing local procurement. However, in that year, the New York State Legislature enacted a new article (5-A) of General Municipal Law (“GML”) (§ 100 et seq) to provide one overall competitive bidding scheme for political subdivisions.³²³

The primary objective of this 1953 reform was “to harmonize and to extend the application of laws relating to public bidding on contracts let by counties, cities, towns, villages, school districts and district corporations.”³²⁴ And the central reason for requiring competitive bidding laws was to: (a) to guard against local favoritism and fraud; and (b) to help political subdivisions obtain goods and services at the lowest possible price to ensure the prudence expenditure of public monies.³²⁵

<https://dos.ny.gov/system/files/documents/2026/02/adopting-local-laws-in-nys.pdf> [<https://perma.cc/BQJ9-GC5E>].

³¹⁹ ADOPTING LOCAL LAW IN NEW YORK STATE, *supra* note 318, at 6.

³²⁰ *Cnty. of Onodaga v. New York State* (quoting *Wambat Realty Corp. v. State of New York*, 41 N.Y.2d 490, 297 (1977)).

³²¹ ADOPTING LOCAL LAW IN NEW YORK STATE, *supra* note 318, at 2-3.

³²² *See* COMPETITIVE BIDDING UNDER GENERAL MUNICIPAL LAW § 103, *supra* note 212 at 1; *see also* Harp, *supra* note 218, at 43 (“In New York, for example, the competitive bidding requirements of Canal Law, Sec. 30, appear to date back to legislation enacted in 1847”).

³²³ *Id.*

³²⁴ Mem of Dept. of Audit and Control, Bill Jacket, L 1954, ch 861, 1954 McKinney’s Session Laws of NY at 2211.

³²⁵ *Id.* at 2212.

1. Lowest Bidder Procurement

To accomplish these goals, GML § 103(1) requires, with exceptions discussed below, that purchase contracts in excess of \$20,000, and all contracts for public work in excess of \$35,000, shall be awarded “to the lowest responsible bidder furnishing the required security after advertisement for sealed bids” and pursuant to the overall requirements of that section.³²⁶ This provision relates to public contracts “awarded by the appropriate officer, board or agency of a political subdivision or of any district therein including but not limited to a soil conservation district,” and “political subdivision is defined as “a municipal corporation, school district, district corporation and board of cooperative educational services.”³²⁷

The New York State courts have strictly interpreted this lowest bidder requirement of § 103. For example, in a 2011 case, *In re. AAA Carting & Rubbish Removal, Inc. v. Town of Southeast*, the New York Court of Appeals overturned a town board decision awarding a higher public contract bid instead of the lowest responsible bid.³²⁸ In that case, the Town of Southeast, in Putnam County, sought competitive bids for a residential refuse removal contract. The Appellate Division, Second Department supported the Town’s decision to award to the highest bidder of three companies because they had newer trucks and were deemed more responsible and professional. The appellate court concluded that the Town “may investigate the experience and background of the bidder,”³²⁹ and that a municipality’s discretion to reject a bid “ought not to be disturbed by the courts unless [it is] irrational, dishonest or otherwise unlawful.”³³⁰ The state’s highest court reversed, holding that the lowest responsible bidder standard of § 103 must be strictly construed to

³²⁶ See N.Y. GEN. MUN. LAW § 103(1).

³²⁷ *Id.*; N.Y. GEN. MUN. LAW § 100(1).

³²⁸ See *AAA Carting & Rubbish Removal, Inc. v. Town of Southeast*, 951 N.E.2d 57, 58 (N.Y. 2011).

³²⁹ *AAA Carting & Rubbish Removal, Inc. v. Town of Southeast*, 902 N.Y.S.2d 659, 661 (N.Y. App. Div. 2010) (quoting *Eldor Contracting Corp. v. Town of Islip*, 716 N.Y.S.2d 681, 682 (N.Y. App. Div. 2000)).

³³⁰ *Id.* at 661 (quoting *Conduit & Found. Corp. v. Metro. Transit Auth.*, 485 N.E.2d 1005, 1008 (N.Y. 1985)).

achieve the central purposes of the state's competitive bidding statutes—namely, to protect “the public fisc” and prevent “favoritism, improvidence, fraud and corruption” in the awarding government contracts.³³¹ Here, the Court of Appeals found the Town Board's decision arbitrary and capricious because it evaluated bids using subjective and qualitative factors, criteria not explicitly in the bidding request.³³²

The New York courts have also made clear that GML § 103 preempts local law where there is a conflict with state law. To cite one example, in a 2006 case, *In re. Council of City of N.Y. v. Bloomberg*, the New York Court of Appeals reviewed the NYC Equal Benefits Law of 2004, which was enacted by the NYC Council over the veto of former Mayor Michael Bloomberg.³³³ The Equal Benefits Law provided that “no city agency may enter into contracts having a value of \$100,000 or more annually with any person or firm that fails to provide to its employees' domestic partners employment benefits equal to those provided to spouses.”³³⁴ The Court of Appeals affirmed the invalidity of the Equal Benefits Law because it contradicted § 103. The Court held that it opens the door to favoritism when municipalities are limited “to contract only with firms that provide certain benefits to their employees.”³³⁵ While the Court found that the provision may have minimal economic impact and represent a desirable social policy goal, it concluded that New York City may not freely pursue it by ignoring requirements of the competitive bidding statute.³³⁶

Another important case interpreting § 103 is *Matter of L&M Bus Corp v. NYC Department of Education*.³³⁷ This 2011 Court of Appeals case involved a challenge to the bid selection process of the NYC Department of Education (“DOE”) in connection with its busing contracts. Specifically, 23 transportation vendors sued the DOE over a bid to bus handicapped children between home and school

³³¹ *AAA Carting*, 951 N.E.2d at 60.

³³² *See id.* At 61–62.

³³³ *See Council of N.Y. v. Bloomberg*, 846 N.E.2d 433, 435 (N.Y. 2006).

³³⁴ *Id.*

³³⁵ *Id.* at 438.

³³⁶ *See id.* at 438, 442.

³³⁷ *See L&M Bus Corp. v. N.Y.C. Dep't of Educ.*, 950 N.E.2d 915 (N.Y. 2011).

that included, among other challenged provisions, a requirement that the contractor give priority in hiring DOE employees on a master seniority list when those employees became unemployed due to the reassignment of busing contracts.³³⁸ The petitioners argued that implementing this “Employee Protection Provision (EPP)” would cause bidders to inflate costs to protect themselves from the unknowns of which employees could be hired.³³⁹ In response, the City argued that failure to utilize the EPPs could cause labor strikes and that they supported the use of a skilled, veteran work force.³⁴⁰ Citing GML § 103(1), and the fiscal objectives of this provision, the Court of Appeals held that: “While anti-displacement provisions might be viewed as socially beneficial, the bidding laws are not the proper avenue for achieving such goals.”³⁴¹ The Court further added that this goal could be achieved in a less restrictive way, including imposing an “experience requirement in the bidding specifications.”³⁴²

2. Best Value Procurement

In 2012, the New York State Legislature undertook a significant reform of GML § 103(1) to permit cities and towns to also award contracts “on the basis of best value.”³⁴³ As noted above, the best value solicitation method was first added to state law through the passage of the Procurement Stewardship Act of 1995.³⁴⁴ This Act updated and consolidated laws primarily governing the state’s procurement practices—it was not aimed at municipalities and political subdivisions. Codified in N.Y.S Finance Law § 163 (1)(j), the Legislature defined best value as “the basis for awarding contracts for services to the offerer which optimizes quality, cost and efficiency, among responsive and responsible offerers. Such basis shall

³³⁸ See *id.* at 918.

³³⁹ *Id.*

³⁴⁰ See *id.* at 921.

³⁴¹ *Id.* at 921–22.

³⁴² *Id.* at 922.

³⁴³ A. 8692, 2012 Legis. Sess., Ch. 2, Sec. 1 § 1., (N.Y. 2012).

³⁴⁴ See N.Y. STATE FIN. LAW § 163(1)(j) (McKinney 2026), as amended by the Procurement Stewardship Act of 1995, ch. 83, 1995 N.Y. Sess. Laws 22-23 (McKinney).

reflect, wherever possible, objective and quantifiable analysis.”³⁴⁵ This procurement method initially was allowed for state agencies only—not localities—and it was also limited to “services” as opposed goods or commodities.³⁴⁶ And again, this 1995 Act in fact required that the procurement process for state agency service and technology contracts must be based on “best value” determinations.³⁴⁷

In 2012, the definition of best value was later amended to also state that this purchasing method “may also identify a quantitative factor for offerers that are small businesses, certified minority- or women-owned business enterprises [as defined by sections of NY Executive Law] to be used in evaluation in evaluation of offers for awarding of contracts for services.”³⁴⁸ And in 2015, this best value provision was further modified to allow the use of a “quantitative factor” for “service-disabled veteran-owned business enterprises” as well.³⁴⁹

When best value was added to N.Y.S. General Municipal Law § 103(1) in 2012, the Legislature did not provide an alternative definition of that term—instead, it simply cross-referenced the existing definition contained in N.Y.S. Finance Law § 163 (1)(j).³⁵⁰ But significantly, the new law allowed best value purchasing to apply to both goods and services, again even though § 163 (1)(j) only referred to services.³⁵¹ Also, in its 2012 change to GML § 103(1), the Legislature did not automatically permit all municipalities to utilize the best value procurement method.³⁵² Instead, the use of best value by all political subdivisions—except New York City—must first be “authorized by local law or, in the case of a district corporation,

³⁴⁵ N.Y. STATE FIN. LAW § 163(1)(j) (McKinney 2026) (emphasis added).

³⁴⁶ N.Y. STATE FIN. LAW § 163(4)(d) (McKinney 2026); N.Y. STATE FIN. LAW § 160(7) (Consol. 2026); *see also* PROCUREMENT GUIDELINES, *supra* note 69, at 22-23, 32-34 (discussing best value solicitations for state agencies).

³⁴⁷ N.Y. STATE FIN. LAW § 163(4)(d).

³⁴⁸ S.6255-D, 2012 Legis. Sess., Ch. 55, Part L §j (N.Y. 2015)

³⁴⁹ A 7580, 2015 Legis. Sess. (N.Y. 2015) (enacted).

³⁵⁰ *See* N.Y. GEN. MUN. LAW § 103 (Consol. 2025); S. 6117, 2011–12 Leg. Sess. (N.Y. 2012).

³⁵¹ *See id.*; N.Y. STATE FIN. LAW § 163(1)(j) (McKinney 2026).

³⁵² *Id.*

school district or board of cooperative educational services, by rule, regulation, or resolution adopted at a public meeting.”³⁵³

In explaining the overall 2012 statutory change, the N.Y.S. Assembly’s Memorandum of Support declared that this method “is critical to efforts to use strategic sourcing principles to modernize the supply chain and ensure that taxpayers obtain the highest quality goods and services at the lowest potential cost, while also ensuring fairness to all competitors.”³⁵⁴ The support memo added that “[t]oday, the federal government, approximately half of the states and many localities have added best value selection processes to their procurement options,” and that “[w]ith the increased complexity of the goods and services that municipalities must obtain in order to serve taxpayers, it is critical to consider selection and evaluation criteria that measure factors other than cost in the strictest sense.”³⁵⁵ This memo also noted that best value would also help municipalities meet their important goals, including “participation of small, minority and women-owned businesses, and the development of environmentally-preferable goods and service delivery methods.”³⁵⁶

Reflecting the definition of “best value” codified in N.Y.S. Finance Law § 163(1)(j), the Office of the State Comptroller advises municipalities in a comprehensive 2020 guidance document to utilize the best value solicitation method to, whenever possible, undertake an “objective and quantifiable analysis.”³⁵⁷ They write in their official guidance document that factors such as reliability of a product, useful lifespan and experience of a service provider may be considered when assessing best value.³⁵⁸ The Comptroller’s Office adds further that “political subdivision[s] should demonstrate, by a cost-benefit analysis, quantifiable value of savings derived from non-

³⁵³ See N.Y. GEN. MUN. LAW § 103(1) (Consol. 2026).

³⁵⁴ Carl Heastie, N.Y. State Assemb., Memorandum in Support of A8692 (Jan. 5, 2012).

³⁵⁵ *Id.*

³⁵⁶ *Id.* A New York State Senate Introducer’s Memorandum in Support of an earlier version of the legislation includes similar language. See N.Y. State Sen. Ranzenhofer Memorandum in Support of S4753A (Jan. 27, 2012).

³⁵⁷ COMPETITIVE BIDDING UNDER GENERAL MUNICIPAL LAW § 103, *supra* NOTE 212 AT 4.).

³⁵⁸ See *id.*

price factors that offset the price differential of the lower price offers.”³⁵⁹

The Comptroller’s Office guidance document for municipalities does not offer guidance on how to utilize a “quantitative factor” in connection to contracting with small, certified minority- or women-owned businesses or service-disabled veteran-owned businesses. And it does not discuss the potential inclusion of “environmentally-preferable” goods and services when applying the best value procurement method—as suggested in the New York State Legislature’s 2012 Memo of Support 1.³⁶⁰

But in an earlier 2016 procurement guidance document prepared for municipalities, the New York State Comptroller’s Office did advise: “[w]hen seeking competition, local governments and school districts generally can consider whether energy-efficient equipment will produce savings in energy costs and, if properly justified, may include an energy efficiency threshold in their specifications or consider energy efficiency as part of a ‘best value’ analysis.”³⁶¹ Additionally, the New York State Procurement Guidelines, published by the Office of General Services for state agency procurement, notes that “[b]est value evaluations include an analysis of the technical proposals, a separate comparative analysis of the cost proposals, and a method for combining the results of the technical and cost proposal evaluations to arrive at the [final selection].”³⁶²

There are only a handful of court cases interpreting the “best value” statutory language—most likely because it is a much more recent purchasing option for state (since 1995) and municipal (since 2012) agencies and institutions. One pre-2012 opinion from the Appellate Division, Third Department that discusses the application of the best value standard is *Transactive Corp. v. N.Y.S. Department of Social Services* (“DSS”).³⁶³ In that 1997 case, the Northeast

³⁵⁹ *Id.*; see also OFF. OF THE NEW YORK STATE COMPTROLLER, SEEKING COMPETITION IN PROCUREMENT 7-8 (2016) (discussing definition of best value under state law).

³⁶⁰ Carl Heastie, N.Y. State Assembly Memorandum in Support of Legislation, A8692 (Jan. 5, 2012).

³⁶¹ See SEEKING COMPETITION IN PROCUREMENT *supra* note 359, at 19.

³⁶² See PROCUREMENT GUIDELINES, *supra* note 69, at 32.

³⁶³ See generally *Transactive Corp. v. N.Y. State Dep’t of Soc. Servs.*, 665 N.Y.S.2d 701 (N.Y. App. Div. 1997) (lv granted). On appeal, the Court of Appeals

Coalition of States sent an RFP for a regional electronic benefit transfer system. The RFP required a two-part bid: technical and pricing, which DSS committees evaluated. One company, Transactive/Fleet, ranked first in technical rankings and was 18% more expensive than the lowest bidder, Citicorp, who ranked fourth in technical rankings. The selection committee chose Citicorp. Transactive/Fleet commenced an Article 78 proceeding seeking an annulment of the contract on the ground that it did not comply with the Procurement Stewardship Act of 1995.

The Appellate Court upheld the award to Citicorp by the DSS. It wrote: “In awarding a contract for services, a State agency generally cannot rely solely on price as the determinative factor but must engage in a cost-benefit analysis since State Finance Law § 163(10) provides that such a contract must be awarded on the basis of best value, a method that optimizes quality, cost and efficiency.”³⁶⁴ The Court found that the technical and financial evaluations by DSS fulfilled the requisite cost-benefit analysis, and that DSS’s reliance on a “competitive range [of 10%] was permissible,” because “where a price proposed by a responsive and responsible bidder is lower than a price offered by another bidder by a stated percentage, any increase in value embodied in the higher price will be offset by the cost savings of the lower priced proposal.”³⁶⁵

The only best value case discovered to date under GML § 103 involved the Town of Busti (“Town”) in bids to operate its solid waste transfer facility—*In re Application v. The Town of Busti and Beichner Waste Services*,³⁶⁶ Casella Waste Management (“Casella”), the petitioner and lowest responsible bidder who operated the facility at the time, challenged the award of the contract to

affirmed the order to dismiss the appellant subcontractor’s petition on different grounds. The Court held that appellant had no standing to challenge the award of a public contract because he was not “within the zone of interests protected by State Finance Law.” *Transactive Corp. v. N.Y. State Dep’t of Soc. Servs.*, 706 N.E.2d 1180, 1183 (N.Y. 1998).

³⁶⁴ See *Transactive Corp.*, 665 N.Y.S.2d at 705.

³⁶⁵ See *id.*

³⁶⁶ *In re Application v. The Town of Busti and Beichner Waste Servs.*, 2015 N.Y. Misc. LEXIS 11181, at *2 (Sup. Ct. Erie Cnty. July 30, 2015).

respondent Beichner Waste Services (“Beichner”).³⁶⁷ The Town’s bid specifications called for pricing based on an estimated 145 loads of garbage and recyclables per year.³⁶⁸ Casella’s bid had lower fixed charges and higher variable charges (i.e., per load), totaling \$193,275, while Beichner’s bid had higher fixed charges and lower variable charges, totaling \$383 more.³⁶⁹

The Town board moved to accept Beichner’s bid based on per load fees, equipment, and service.³⁷⁰ Prior to the decision, it had considered testimony suggesting Beichner would be the best value because of its: (1) lower per load fees so that if loads exceeded 145, the total price would be cheaper relative to petitioner’s; (2) larger and better equipment; and (3) superior service based on the Town highway superintendent’s complaints about problems with Casella’s management, equipment, reliability, communication, and timeliness.³⁷¹

In its opinion, the Supreme Court in Erie County observed that the Town had recently adopted a law authorizing best value purchasing via state GML § 103(1).³⁷² While it found that the Town board superintendent could have documented the justifications for awarding the contract to Beichner based on “best value,” they did not do so here.³⁷³ The court held that:

[N]either the Town highway superintendent nor the Town board engaged in or employed “objective and quantifiable analysis” in advocating and proposing the acceptance of Beichner’s bid over the lower bid of petitioner, nor in awarding the contract to Beichner. Moreover, neither the Town highway superintendent nor the Town board “thoroughly and accurately documented” the reasons or justifications for awarding the contract on the basis of best value instead of to the lowest responsible bidder, nor for deeming Beichner’s bid rather than Casella’s lower bid the “best value.”³⁷⁴

³⁶⁷ *Id.*

³⁶⁸ *Id.* at *3.

³⁶⁹ *Id.* at *4.

³⁷⁰ *Id.* at *7.

³⁷¹ *Id.* at *6-7.

³⁷² *Id.* at *2 (Town Law § 122); *see also* N.Y. GEN. MUN. LAW § 103(1).

³⁷³ *Id.* at *13.

³⁷⁴ *Id.* at *13.

At the same time, the Court rejected Petitioner's argument that acceptance of a higher bid pursuant to "best value" is a per se violation of another, older town law that Petitioners argued required an award to the lowest bidder.³⁷⁵ The Court noted that this older law is incorporated by reference in GML § 103(1), thus the subsequent adding of "best value" to state law should be viewed as "effectively amending" the Town's law.³⁷⁶

As mentioned above, under GML § 103(1), political subdivisions other than New York City who wish to utilize "best value" procurement must first be authorized by local law. Since 2012, many political subdivisions have authorized best value, including, for example, Dutchess, Ulster and Essex Counties, and the Village of Pelham.³⁷⁷

Best value methodologies across these jurisdictions are similar in that they emphasize highest quality and cost-efficiency in the long term based on objective and quantifiable criteria and analyses. Under these local laws, the relevant Village, Town, City, or County Board typically determines what factors apply. These factors include reliability, efficiency, maintenance, useful lifespan, timeliness of performance, experience of bidders, durability, availability of replacement parts or maintenance contractors, craftsmanship, and proximity.³⁷⁸

Some New York municipalities require additional procedures and documentation when making an award based on best value. For example, in the Village of Pelham, the department head must prepare a written specification explaining why it is in the best interests of the Village and its taxpayers to use best value instead of lowest

³⁷⁵ *Id.* at *8.

³⁷⁶ *Id.* at *9-11.

³⁷⁷ *See, e.g.*, Dutchess County, N.Y. Code § 81, art. II; Ulster County, N.Y. Code § 6, art. II (2014) Essex County, N.Y. Best Value Procurement Law, Local Law No. 4 (2014), <https://essexcountyny.gov/wp-content/uploads/2015-Purchasing-Policy.pdf>; Village of Pelham, N.Y. Code § 6 (2017).

³⁷⁸ *See* Town of Busti, N.Y. Code § 108-4; Village of Pelham, N.Y. Code § 6-2(B)(4); Town of Enfield Local Law #2 for 2017 Best Value Competitive Bidding and Procurement § 4(D)(3); ESSEX COUNTY, PURCHASING POLICY 28-30 (2015), <https://essexcountyny.gov/wp-content/uploads/2015-Purchasing-Policy.pdf>; Village of Pelham, N.Y. Code § 6-2(C).

responsible bidder and the bid award “shall [also] be accompanied by a statement explaining how the award is expected to result in savings for the Village over time and . . . shall include any objective and quantifiable analysis of clearly described and documented criteria . . . as they apply to the rating of bids or offers.”³⁷⁹

Mirroring the statutory language of State Finance Law § 163 (1)(j), New York City procurement laws allow, as an alternative to the traditional lowest bidder process, a bid or proposal that represents the best value to the City by optimizing “quality, cost and efficiency.”³⁸⁰ New York City law also states that: “Such basis shall reflect, wherever possible, objective and quantifiable analysis.”³⁸¹ Additionally, among the criteria that New York City agencies may consider in awarding best value contracts are maintenance of harmonious labor relations, protection of the health and safety of workers as well as warranties provided with the product or service, past performance, reliability, staff abilities and financial capability.³⁸² Also consistent with § 163 (1)(j), New York City law allows for the use of a “quantitative” factor or preference for awarding contracts to “minority or women-owned business enterprises.”³⁸³

New York City procurement regulations specify two separate methods of procurement: (a) competitive sealed bidding and (b) competitive sealed proposals.³⁸⁴ In short, competitive sealed bidding—the first of the two city procurement methods—utilizes “invitation for bids” and allow agencies to make awards via either “lowest responsive and responsible bidder” or “to the bidder whose bid represents the best value to the city by optimizing quality, cost and efficiency.”³⁸⁵ And when applying the best value screen under the competitive bidding method, city regulations, with some

³⁷⁹ See Village of Pelham, N.Y. Code § 6-2(C).

³⁸⁰ See N.Y.C. Charter § 311(i)(2); Procurement Policy Board Rule 3-02 (b)(2)(iv)(B) [hereinafter PPBR]; PPBR 3-02(o)(1)(ii); PPBR 3-03(a).

³⁸¹ See N.Y.C. Charter § 311 (i)(2).

³⁸² See N.Y.C. Charter § 311 (i)(2).

³⁸³ See N.Y.C. Charter § 311 (i)(2).

³⁸⁴ 9 RCNY PPBR § 3-01.

³⁸⁵ 9 RCNY PPBR § 3-01(b)(2)(iv)(B)

exceptions, can look at bids that are within 10% higher than the lowest responsive bid.³⁸⁶

With respect to the competitive sealed proposal method—the second articulated option—city regulations instruct that agencies use an RFP and issue award “that represents the best value to the City by optimizing quality, cost and efficiency and therefore is determined to be the most advantageous to the City, taking into consideration the price and such other factors or criteria that are set forth in the RFP, including the quantitative preference” for minority or women-owned businesses.³⁸⁷

Significantly, in June 2024, New York City directed all mayoral agencies to use, with some exceptions (e.g., construction contracts), the “best value” method of procurement for all contracts for goods and services through both of the two options discussed above—competitive sealed bidding and competitive sealed proposals.³⁸⁸ The memo referred to these two approaches as “Best Value Bid” or “Best Value RFP” methods.³⁸⁹ Among other objectives, the city determined that moving all mayoral agency procurement processes to best value procurement via “Best Value Bid” or “Best Value RFP” allowed it to “grant advantages to historically disadvantaged groups through the application of preferences to City

³⁸⁶ 9 RCNY PPBR § 3-02(o)(1)(iii). When awarding a minority or women-owned business enterprises on the basis of best value under the competitive sealed bidding methods, city regulations require, with some exceptions, that such vendors be given a 10% price preference. 9 RCNY PPBR § 3-02(o)(1)(iv).

³⁸⁷ 9 RCNY PPBR § 3-03 (a)(1). The city regulations for this RFP-Best Value approach also indicate that for goods and standard services, minority or women-owned businesses must generally receive a 10% preference of the “total technical points earned in the evaluation of the proposal,” or in certain circumstances, a 10% price preference. 9 RCNY PPBR § 3-03 (g)(6). For construction-related services, the “technical merit” ranking of potential vendors must provide, again with some exceptions, “a point preference of five percent (5%) of the total technical points” given to all proposers that are minority or women-owned businesses. 9 RCNY PPBR § 3-03 (g).

³⁸⁸ See MAYOR’S OFF. OF CONT. SERVS., MEMORANDUM FROM LISA M. FLORES, DIRECTOR AND CITY CHIEF PROCUREMENT OFFICER, UTILIZATION OF BEST VALUE COMPETITIVE SEALED BIDS AND BEST VALUE COMPETITIVE SEALED PROPOSALS 1–3 (June 26, 2024), <https://www.nyc.gov/assets/foodpolicy/downloads/pdf/best-value-bid.pdf> [<https://perma.cc/97ML-T76B>].

³⁸⁹ See *id.* at 1.

or State certified” minority or women-owned business enterprises.³⁹⁰

More recently, however, the City revised this policy to give agencies the option of simply using the competitive sealed bidding process without best value—thus, allowing them to rely instead on the more traditional process of awarding contracts to the lowest bidder.³⁹¹ But the new Mayoral directive still requires agencies, again with exceptions, to utilize “Best Value RFPs” when relying on the competitive sealed proposal method.³⁹² And overall, the Mayor’s office emphasized that utilizing either a Best Value RFP or Best Value Bid was one way the Administration could advance its goal of “creat[ing] more opportunities for the small businesses that form the fabric of our City to participate in our work through contracting and procurement.”³⁹³

3. Exceptions to Lowest Bidder and Best Value Procurement

There are a variety of statutory and court created exceptions to the “lowest responsible bidder” and “best value” procurement requirements of GML § 103(1). One exception in statutory law, for example, applies to emergencies and other unforeseen occurrences “whereby circumstances [affect] public buildings, public property or the life, health, safety or property” of a political subdivision.³⁹⁴ Additionally, to cite one court-created rule, there is an exception for public work contracts that require the exercise of specialized or technical skills, expertise or knowledge—or so-called “professional services.”³⁹⁵

Additionally, there are several exceptions in existing GML that are especially relevant in food procurement. Specifically, there are four somewhat complex exceptions set forth in GML § 103 that

³⁹⁰ See *id.* at 1.

³⁹¹ MEMORANDUM FROM KIM L. YU, DIRECTOR AND CITY CHIEF PROCUREMENT OFFICER, MAYOR’S OFF. OF CONT. SERVS. TO MAYORAL AGENCY CHIEF CONTRACTING OFFICERS, UTILIZATION OF BEST VALUE COMPETITIVE SEALED BIDS AND BEST VALUE COMPETITIVE SEALED PROPOSALS 1 (Aug. 1, 2025).

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ See N.Y. GEN. MUN. LAW § 103(4) (Consol. 2026).

³⁹⁵ COMPETITIVE BIDDING UNDER GENERAL MUNICIPAL LAW § 103, *supra* note 212, at 21-24.

relate to the purchasing of New York State grown and produced food. The first one, set forth at GML § 103(8-a), allows political subdivisions to include, in certain food contracts, provisions that mandate that “the essential components of such food products are grown, produced or harvested in New York state, or that any processing of such food products take place in facilities located within New York state.”³⁹⁶ The statute directs the Commissioner of Agriculture and Markets to determine which food products, and what periods of time each year, are applicable under this provision.³⁹⁷ The law also specifies that if municipalities choose to incorporate such provisions they “shall specify, with the advice of the [Agriculture and Markets Commissioner] the percentage of each food product required to be grown, produced, harvested or processed within New York state.”³⁹⁸

A second exception, under § 103(9)(a), allows school districts or a Board of Cooperative Education Services (“BOCES”) to purchase without bidding “eggs, livestock, fish, dairy products (excluding milk), juice, grains, and species of fresh fruit and vegetables, grown, produced or harvested, in New York State” if the contract is for less than \$150,000.³⁹⁹ This exception allows school districts to exceed \$150,000 if they get special permission from the state and where there are no other viable producers or growers.⁴⁰⁰ (To support such “farm-to school” efforts, as discussed above in Part II.D, state law also allows school food authorities to receive a state subsidy of

³⁹⁶ See N.Y. GEN. MUN. LAW § 103(8-a) (Consol. 2026).

³⁹⁷ See N.Y. GEN. MUN. LAW § 103(8-a)(b) (Consul. 2026); N.Y. STATE DEP’T OF AGRIC. & MKTS., NEW YORK STATE FOOD REFERENCE LIST (2007), <https://www.bers.nyc.gov/assets/mocs/downloads/Regulations/food-policy-standards/NYSFoodList.pdf> [<https://perma.cc/867S-7ZH6>].

³⁹⁸ See N.Y. GEN. MUN. LAW § 103(8-a)(c)(i) (Consul. 2026).

³⁹⁹ See N.Y. GEN. MUN. LAW § 103(9)(a) (Consul. 2026).

⁴⁰⁰ See N.Y. GEN. MUN. LAW § 103(9)(a) (Consul. 2026); Bidding Exemption for Purchasing New York State Food, N.Y. COMP. CODES R. & REGS. tit. 8, § 114.3. See also N.Y. GEN. MUN. LAW § 103(9)(b) (Consul. 2026) for additional requirements.

25 cents per meal if they spend at least 30% of total food cost for their school lunches from New York state sources).⁴⁰¹

A third similar exception, under § 103(9-a), allows counties to purchase the same food products allowed for school districts when bought from: (a) an association of New York producers or growers comprised of 10 or fewer owners or farms, or an association of more than 10 where no other producers or growers have offered to sell to the county; and (b) the annual amount does not exceed the greater of \$20,000 or 20 cents multiplied by the total population of the county.⁴⁰² Lastly, a fourth and final exception, under § 103(10), allows a board of education to buy milk from a New York State licensed producer as long as the total cost does not exceed an amount equal to 25 cents multiplied by the total number of school days multiplied by the total enrollment in the school district.⁴⁰³

In summary, laws governing local government procurement vary significantly from state to state, and even within states with “Home Rule” delegations like California and Illinois, there are differences between cities. Even with this variability, however, the most common method of procurement still centers on some form of lowest responsible bidder—sometimes coupled with a modest price preference for certain categories of (usually local) vendors. The best value purchasing option, or a comparable method that allows for

⁴⁰¹ See *S. 8006 Summary*, N.Y. STATE ASSEMBLY (Apr. 9, 2022), https://assembly.state.ny.us/leg/?default_fld=&bn=S08006&term=2021&Summary=Y&Actions=Y&Text=Y&Committee%26nbspVotes=Y&Floor%26nbspVotes=Y [<https://perma.cc/C3VW-FJ7P>]; see also NYS AGRIC. & MKTS., 30% NYS INITIATIVE HANDBOOK (2022), <https://agriculture.ny.gov/system/files/documents/2022/09/30initiativehandbook.pdf> [<https://perma.cc/7C7J-GZ3C>] (discussing application procedures for this NYS program).

⁴⁰² See N.Y. GEN. MUN. LAW § 103(9-a) (Consul. 2026).

⁴⁰³ See N.Y. GEN. MUN. LAW § 103(10) (Consul. 2026); Bidding Exemption for the Direct Purchasing of Milk, N.Y. COMP. CODES R. & REGS. tit. 8, § 114.4 (2023). Note that General Municipal Law § 103 (8) provides an exception for purchases of goods, supplies and services by “municipal hospitals or nutrition programs that receive federal, state, or local funding” under joint contracts and arrangements entered into pursuant to Public Health Law § 2803-A...”. N.Y. GEN. MUN. LAW § 103(8) (Consul. 2026). Under this provision of Public Health Law, hospitals are authorized “enter into contracts and make arrangements among themselves and among other municipal, state, federal or privately owned hospitals, or any medical schools, or other health related facilities having or utilizing hospital services or facilities or voluntary ambulance services” that receive such government funding. NYS Public Health Law § 2803-A.

non-price considerations, is the second most prevalent approach. But, based on the non-exhaustive research, the availability of best value purchasing for localities—as opposed to states—still remains relatively limited. More broadly, there appears to be no comprehensive state law in the U.S. that explicitly ties best value purchasing for municipalities to the type of values or standards championed by good food purchasing advocates. The closest example found might be the 2022 Illinois law relating to school food purchasing.

In New York State, the lowest responsible bidder standard has long been a required procurement approach for localities, and the courts have historically strictly enforced the applicable provisions of GML. And while the best value option was extended (with required local action outside of New York City) to political subdivisions in New York in 2012, the statutory definition of best value still is based on cost-related factors like quality and efficiency—with a special provision aimed at helping small or minority/woman/veteran-owned businesses. Thus, it might be difficult to argue that the current New York State definition of best value would easily encompass animal welfare, environmental sustainability, and some other “good food” values. Further, New York, unlike the majority of states in the country, does not have any price-preference provision for buying locally grown or processed food.

With this backdrop, I now turn to proposed good food legislation in New York State that would explicitly authorize the use of values-based food procurement standards for local governments.

IV. “GOOD FOOD” LEGISLATION IN NEW YORK

Seeking to fill critical gaps in New York State procurement laws, in 2022 state legislators introduced new legislation to giving municipalities, schools and other political subdivisions greater discretion to purchase New York State grown or produced food, or food that meets certain nutrition, environmental, labor, animal welfare and other good food standards. Specifically, the bill would amend New York State General Municipal Law § 103(1) to allow—but not mandate—political subdivisions to award food purchase contracts that cost up to 10% higher than the lowest responsible bid where a vendor meets one or more of seven “values based

procurement standards.”⁴⁰⁴ Over three years of negotiations, and in the face of stiff resistance from the New York State farm lobby, the bill was amended to restrict the applicability of the legislation to only vendors based in New York—significantly limiting its impact in advancing other non-local values. But at the same time, the legislation was revised to allow localities to utilize the best value purchasing method—in addition to the 10% price option—in conjunction with all seven values spelled out in the bill.

In this Part, I discuss the introduction and evolution of this bill—including its passage through the NYS Legislature in 2024 and subsequent veto later that year by Governor Kathy Hochul. The level of detail below is intended to provide a greater understanding of this complicated legislative initiative in New York, highlight the opposition to this type of bill, and assist decision-makers and advocates in other states seeking to advance similar values-based food legislation. And as mentioned earlier, my examination of this legislative effort is based in part from my direct involvement as an attorney for NRDC.

A. Original 2022 “Good Food NY” Legislation

In January 2022, N.Y.S. Senator Michelle Hinchey and a coalition of labor, farming, environmental, and other groups—soon known officially as the “NYS Good Food Purchasing Program Coalition”—announced state legislation to allow municipal institutions to institute values-based food procurement.⁴⁰⁵ In the press release announcing this new bill, Senator Hinchey explained how it would make New York the first state in the nation to enact such a law and that existing state law restricted schools, hospitals and other institutions to “choose the lowest responsible bidder in all food purchasing decisions”—without consideration of other values important to these entities.⁴⁰⁶ N.Y.S. Assembly Majority Leader Crystal D. People-Stokes, the lead sponsor of the bill in her legislative chamber,

⁴⁰⁴ N.Y. State S., S.6955A, 2023–2024, Reg. Sess. (N.Y. 2023).

⁴⁰⁵ See *Senator Michelle Hinchey and Coalition Announce Legislation to Revolutionize the Way Municipalities Buy Food*, GOOD FOOD PURCHASING PROG. (May 13, 2024), <https://goodfoodcities.org/senator-michelle-hinchey-and-coalition-announce-legislation-to-revolutionize-the-way-municipalities-buy-food/> [https://perma.cc/T7HT-UNUP]; S. 7534, 2021–2022 Leg., Reg. Sess. (N.Y. 2021); A. 8580, 2021–2022 Leg., Reg. Sess. (N.Y. 2021).

⁴⁰⁶ *Id.*

also stated in the release: “[m]oving beyond lowest responsible bidder through the Good Food Purchasing Program makes sense for New Yorkers and will provide nutritious, environmentally friendly food options to people in many communities that have historically been underrepresented and in this area.”⁴⁰⁷

Specifically, this “Good Food NY” bill, which was introduced in the 2022 legislative session in Albany, would have amended GML § 103(1)(a) to allow municipalities and other political subdivisions to award “purchase contracts” that cost up to 10% higher “than the cost included in a bid by the lowest responsible bidder” to “an otherwise qualified bidder” who meets “one or more” of seven “values based procurement standards.”⁴⁰⁸ These new standards, set forth and defined under a new subsection 103(1)(c), included:

Local Economies. Preference shall be given to New York state or regional suppliers that are sourcing food products in which fifty-one percent of the raw agricultural materials have been grown, harvested, processed and manufactured from within the state or region (within two hundred fifty miles for produce and five hundred miles for animal products); or

Environmental Sustainability. Preference shall be given to producers that adopt practices that contribute to improved soil health and increased carbon sequestration and storage, and that achieve net short-term and long-term greenhouse gas benefits. Such practices shall include those recommended by the United States department of agriculture natural resources conservation service or their equivalent, that will:

⁴⁰⁷ *Id.*; see Sen. Michelle Hinchey, Sponsor’s Mem., S. 7534, 2021–2022 Leg., Reg. Sess. (N.Y. 2021) (the Senate’s sponsoring memo for this bill stated that: “New York State procurement laws have not been updated for over fifty years and are among the nation’s most restrictive. Local governments and institutions currently have to choose the lowest responsible bidder when bidding out a project and are unable to take into account any other criteria....It aims to improve the practices of New York State’s largest producers and suppliers while simultaneously expanding access to institutional contracting opportunities for small and historically marginalized farmers, producers, and suppliers.”).

⁴⁰⁸ S. 7534, 2021–22 Leg., Reg. Sess. § 1.1(a) (N.Y. 2021) (revising N.Y. GEN. MUN. LAW § 103(1)(a) and noting that “purchase contracts” include contracts for food service work but exclude any purchases necessary for the completion of a public works contract).

- (A) achieve the reduction or elimination of synthetic pesticides and fertilizers through use of precision agriculture, integrated pest management, and/or advanced nutrient management;
- (B) avoid the misuse or routine use of hormones or antibiotics for growth promotion or ongoing disease prevention;
- (C) preserve and rebuild soil quality through use of soil health practices, including but not limited to planting cover crops, adopting no-till and reduced tillage, increasing crop rotations and intercropping, and planting perennial crops, to improve the function and resilience of soils;
- (D) protect and enhance wildlife habitats and biodiversity;
- (E) avoid contributing to water quality impairment and avoid contributing to deterioration of local air quality;
- (F) reduce greenhouse gas emissions attributable to livestock through use of feed management, prescribed grazing, amendments for treatment of agricultural waste, and manure management; and
- (G) reduce on-farm energy and water consumption, food waste and green house gas emissions; or

Racial Equity. Preference shall be given to minority and women-owned business enterprises as defined in article fifteen-a of the executive law.⁴⁰⁹

Valued Workforce. In order to avoid labor unrest and thereby secure best value, preference shall be given to suppliers who: respect and protect workers' rights to freedom of association, to organize a union, and to bargain collectively free from retaliation; as evidenced by a union contract or agreeing to enter into a labor peace agreement with a bona fide labor union upon request by that union; or are a worker-owned cooperative; or

Valued Agricultural Workforce. Preference shall be given to suppliers who pay farmers a fair price, using United States department of agriculture pricing standards, for the products they supply that covers their actual cost of production and fair remuneration for their management and labor; or

Animal Welfare. Preference shall be given to producers who provide more humane care for farmed animals by prohibiting intensive confinement (e.g., caging, crating or tethering), providing enough space and environmental enrichments to allow animals to carry out their natural behaviors, using pain control as needed when carrying out physical alterations, utilizing responsible, therapeutic antibiotic use, and requiring humane handling and slaughter, as demonstrated by an independent United States

⁴⁰⁹ See N.Y. EXEC. LAW § 310(7)–(8), (15) (McKinney 2025).

department of agriculture recognized animal welfare certification program with regular, third-party on-farm audits assessing a producer's compliance with one hundred percent of the program's welfare standards; or

Nutrition. Preference shall be given to foods that promote health and well-being, comprised of namely whole grains, fresh and minimally-processed fruits and vegetables, essential fats (including nuts, seeds and fish), and whole plant-based and lean proteins so as to decrease sodium, added sugars, artificial additives, and saturated, hydrogenated, and trans fats.⁴¹⁰

Additionally, the bill provided for greater transparency on how food vendors meet these values, requiring them to submit specified "supply chain data" with the bid, at the time of contract execution, and update such data annually and upon any changes to supplier information. The legislation required this data to include "the name and address of each supplier, distributor, processor, and producer involved in the provision of the products that the bidder will supply."⁴¹¹ The appropriate officer or agency must also make this data publicly available, subject to the state's "Freedom of Information" law.⁴¹²

B. 2023 Version: Local Economies Plus One Additional Value

This "Good Food NY Bill" did not pass through either house of the New York Legislature in the 2022 session.⁴¹³ Before it was reintroduced in 2023, however, it went through several revisions. The most significant change was that the price preference was now only available to suppliers that could meet the "local economies" value "and" one of the other six values.⁴¹⁴ In contrast, the original 2022 version indicated that the price preference could be used if a

⁴¹⁰ See S.7534, 2021–22 Leg., Reg. Sess. § 1.1(c) (N.Y. 2021).

⁴¹¹ *Id.* § 1.1(a) & (b).

⁴¹² *Id.*

⁴¹³ See *Senate Bill S7534*, N.Y. STATE SENATE, <https://www.nysenate.gov/legislation/bills/2021/S7534> [<https://perma.cc/FRC2-M744>] (last visited Mar. 11, 2026).

⁴¹⁴ S.6955A, 2023–24 Leg., Reg. Sess. § 1.1(a) (N.Y. 2023). Another change was the removal of the "valued agricultural workforce" standard. But this value was added back to 2024 and 2025 versions as "valued agricultural sector." See S. 7638-A, 2025–2026 Leg., Reg. Sess. (N.Y. 2025).

vendor met the local economies value “or” one of the additional values.⁴¹⁵ But the bill was not clear on this point because another section of the bill, retained from the original 2022 version, still indicated the price preference could be used if a bidder “fulfills one or more of the values-based procurement standards” set forth in the legislation.⁴¹⁶ Additionally, the 2023 bill shortened the regional supplier definition under “local economies” from 250 miles to 100 miles for produce, and from 500 miles to 200 miles for animal products.⁴¹⁷ It was unclear, however, how this regional distance would be measured: from the border of the state? From the purchaser?

It appears that these 2023 changes were presumably made to address concerns from New York State agricultural stakeholders—led by the powerful Farm Bureau lobby—that the bill would unfairly disadvantage New York farms by providing a price preference for distant out-of-state vendors.⁴¹⁸ What was potentially overlooked in making this change was that if a municipality wanted to avail itself of the new 10% price preference to buy more local food, then it was very possible there will not be enough local or regional farms that could also satisfy another “value” in the legislation. Thus, forcing municipalities to meet local economies plus one other value

⁴¹⁵ S.7534, 2021–22 Leg., Reg. Sess. § 1.1(c)(i) (N.Y. 2021).

⁴¹⁶ S.6955A, 2023–24 Leg., Reg. Sess. § 1.1(a) (N.Y. 2023). Additionally, the Senate sponsor’s memo accompanying the 2023 version continued to indicate it was applicable to a bidder that “can satisfy at least one of the listed criteria.” S.6955A, 2023–24 Leg., Reg. Sess. (N.Y. 2023), <https://www.nysenate.gov/legislation/bills/2023/S6955/amendment/A>. Other changes between the 2022 and 2023 bill versions were relatively minor.

⁴¹⁷ S.6955A, 2023–24 Leg., Reg. Sess. § 1.1(c)(i) (N.Y. 2023). The bill also amended the “racial equity” value in the bill. *See infra* note 446 for a discussion of this change and potential legal concerns with this provision of the legislation.

⁴¹⁸ *See* Letter to The Honorable Crystal Peoples-Stokes and the Honorable Michelle Hinchy from New York Farm Bureau, NYS Vegetable Growers Association, Northeast Dairy Producers Association, New York State Agribusiness Association and Apples from New York 2 (5.16.22) (“We support amending the procurement law to give New York sources food and food products fair access to food service markets....[w]e request that this legislation provide procurement preferences for New York farm products...”); *see also* N.Y. FARM BUR., *supra* note 13 (“We oppose legislation that permits values-based procurement preference to food products for state and local municipalities. This includes efforts to create “standards” that impact sustainability, racial equity, animal welfare, nutrition and workforce welfare that are not currently required in state/federal law.”).

could potentially result in fewer New York food-based contracts under this new provision of GML—not more.

Additionally, while existing law sets forth narrow statutory exceptions from the bidding requirements of § 103(1) (which mandate purchasing food products directly from New York sources), adding a price preference for buying local food for the first time would create an important option for political subdivisions.⁴¹⁹ The primary reason for this is that limiting the bidding process to only New York farms—under § 103(8-a), for example—might not provide a price point that is feasible for many municipalities given that local farm products can be more expensive. Opening bidding to both in-state and out-of-state vendors—which is how the bulk of public food contracts are handled now—helps ensure that the competitive bidding process works effectively for cities and towns that might not have the extra money to solicit bids only from in-state sources. In the end, this bill passed the Senate at the end of the 2023 legislative session but did not make it through the Assembly.⁴²⁰

C. 2024 Version: Passes NYS Legislature but Is Vetoed by Governor Hochul

In New York State’s 2024 legislative session, a slightly revised bill was re-introduced in both the Senate and Assembly.⁴²¹ Many of the changes were minor. But it did alter the definition of animal

⁴¹⁹ For many years, New York City has mistakenly indicated in its “New York State Food Purchasing Guidelines” –issued by the Mayor’s Office of Contract Services – that city agencies could award food contracts where the “price falls within 10% of the lowest responsive, responsible bidder’s price, where that low bidder does not offer New York State food products.” See N.Y.C. MAYOR’S OFF. OF CONT. SERVS., NEW YORK STATE FOOD PURCHASING GUIDELINES 1 (Apr. 17, 2015) (on file with author). These guidelines were issued in response to LL50 of 2011. N.Y.C. Local Law No. 50 (2011). The current version of these city guidelines does not mention this price preference. N.Y.C. MAYOR’S OFF. OF FOOD POL’Y AND N.Y.C. MAYOR’S OFF. OF CONT. SERVS., NEW YORK STATE FOOD PURCHASING GUIDELINES (Aug. 17, 2024), https://www.nyc.gov/assets/food-policy/downloads/pdf/NYS_FoodPurchasingGuidelines_2024.pdf [<https://perma.cc/MC28-73UY>].

⁴²⁰ See *Senate Bill S6955A*, N.Y. STATE SENATE, <https://www.nysenate.gov/legislation/bills/2023/S6955/amendment/A> [<https://perma.cc/VA57-M7RZ>] (last visited Mar. 11, 2026).

⁴²¹ See S.6955A, 2023–2024 Leg., Reg. Sess. (N.Y. 2023).

welfare to remove “by prohibiting intensive confinement (e.g., caging, crating or tethering)” to “provide more humane care for farmed animals by providing enough space”—again in response to concerns from the Farm Bureau and other stakeholders.”⁴²²

This bill was successfully voted through the N.Y.S. Senate and Assembly with bipartisan support in June 2024.⁴²³ However, the bill was vetoed several months later that year by Governor Kathy Hochul.⁴²⁴ In her veto memo, the Governor voiced her strong support for “healthy food alternatives” throughout the state, and that her Administration has established state agency purchasing goals for local food as well as various other programs aimed at supporting N.Y.S. agriculture.⁴²⁵ However, she expressed concern that the bill “could lead to different standards being applied across localities” and “would lead to negative impacts on local producers, uncertainty for growers and could have a negative impact on the state’s ongoing programs and efforts.”⁴²⁶

D. 2025 Version: New York-Based Vendors Only and Best Value

⁴²² *Id.* § 1.1(c)(vi). See Memorandum of Opposition from Kat Slye-Hernandez, Senior Associate Director of Public Policy at the Farm Bureau of New York on Senate Bill 7638-A (May 27, 2025) (on file with author) (“NYFB has serious concerns with the preference language in the environmental sustainability, valued workforce and animal welfare standards [of the Good Food NY bill], including a labor peace agreement being required for the valued workforce standard.”). The revised 2024 bill also added back “valued agricultural sector,” which was included in the original 2022 bill (as “valued agricultural workforce”), but was dropped in the 2023 version. S.6955A, 2023–2024 Leg., Reg. Sess. § 1.1(c)(v) (N.Y. 2023). See S.7534, 2021–22 Leg., Reg. Sess. § 1.1(c)(v) (N.Y. 2021). The bill removed the phrase “to freedom of association” after “protect workers’ rights. S.6955A § 1.1(c)(iv), 2023–2024 Leg., Reg. Sess. (N.Y. 2023); S.7534, 2021–22 Leg. Sess. § 1.1(c)(iv) (N.Y. 2021).

⁴²³ See *Senate Bill S6955A*, N.Y. STATE SENATE, <https://www.nysenate.gov/legislation/bills/2023/S6955/amendment/A> [<https://perma.cc/VA57-M7RZ>] (last visited Mar. 13, 2026).

⁴²⁴ See Veto Memorandum #133, S.6955A, N.Y. Governor Kathy Hochul (Dec. 21, 2024).

⁴²⁵ *Id.* The programs listed included NYS Grown and Certified, Farm to School, Nourish New York and New York Food for New York Families. See *id.*

⁴²⁶ *Id.*

Option Added

The latest Good Food NY Bill passed the New York State Senate in the 2025 legislative session but did not make it through the Assembly.⁴²⁷ The final 2025 version voted out of the Senate contained three major reforms from the 2024 version.

First, the 2025 version limited contracts awarded with the 10% price preference option to qualified bidders “based in New York state” (undefined in the bill).⁴²⁸ So instead of requiring a vendor to meet a broader “local economies” PLUS one other value to receive the price preference, as required in the earlier version of the bill, a supplier would now instead (a) need to be “based in New York” and (b) meet one of the seven values-based standards, including “local economies” as one of such standards to pick. This change represented a further response to concerns that the bill would provide an unfair advantage to most out-of-state farms over New York operations.⁴²⁹

⁴²⁷ See S.7638A, 2025–26 Leg., Reg. Sess. (N.Y. 2025); *Senate Bill S7638A*, N.Y. STATE SENATE, <https://www.nysenate.gov/legislation/bills/2025/S7638/amendment/A> [<https://perma.cc/WB4J-52V3>] (last visited Mar. 13, 2026).

⁴²⁸ S.7638A, 2025–26 Leg., Reg. Sess. § 1.1(a) (N.Y. 2025).

⁴²⁹ Letter to The Honorable Crystal Peoples-Stokes and the Honorable Michelle Hinchy from N.Y. Farm Bureau, NYS Vegetable Growers Ass’n, N.Y. State Horticultural Soc’y, Empire State Council of Agric. Orgs., Inc. and Apples from N.Y. 1 (June 3, 2024) (“New York farmers are already at a disadvantage in the bidding process because of having higher production and labor costs in New York compared to other states. New York laws should not give procurement preference to food produced in other states.”); *see also*, Memorandum of Opposition from N.Y. Farm Bureau, at 2, (May 27, 2025) (“No other state has amended procurement law to preference food produced in other states.”). The sponsors of the bill resisted making other changes to the 2025 bill, largely pushed by the Farm Bureau and other opponents of the legislation. For example, the bill’s “valued workforce” standard retained the “labor peace agreement” provision. *See* Memorandum of Opposition from N.Y. Farm Bureau, at 2, (Jan. 8, 2024) (“NYFB has serious concerns with the preference language in the environmental sustainability, valued workforce and animal welfare standards [of the Good Food NY bill], including a labor peace agreement being required for the valued workforce standard.”). The bill also retained its original definition of the nutrition standard despite pressure to include dairy products. *See* N.Y. FARM BUREAU, MEMORANDUM OF OPPOSITION TO S. 7638-A (2025) (“The nutrition standard includes fresh fruits and vegetables, whole grains, fish, and lean animal proteins, but it does not give

Second, the bill changed the definition of the “local economies” value to only include:

Food products in which fifty-one percent or more of the raw agricultural materials have been grown, harvested, processed and manufactured within one hundred miles of the location of the purchaser, or in which the bidder of offerer of such food products participates in the department of agriculture and markets’ grown and certified program pursuant to section one hundred fifty-six-h of the agriculture and markets law.⁴³⁰

As discussed above, the older definition of local economies encompassed vendors 100–200 miles and was unclear on how this distance would be measured. But now all food vendors would need to be located within 100 miles of the purchaser—as well as from a supplier who is “New York-based.”

Third, the bill added the “best value” purchasing method to the 10% price preference. Specifically, it allowed municipal food contracts to be awarded “on the basis of best value, as defined in [SFL § 163] . . . and which complies with one or more of the values based procurement standards” listed in the bill.⁴³¹ Like with the price preference, the use of best value was only available to a qualified bidder

preference to nutritious dairy products, such as whole milk, yogurt, and cheese. This standard needs to include all nutrient-dense foods that are essential to a healthy diet, including dairy products.”).

⁴³⁰ S. 7638A, 2025–26 Leg., Reg. Sess. § 1.1(c)(i) (N.Y. 2025) (emphasis added). New York State’s “Grown and Certified” program was established by the N.Y.S. Department of Agriculture and Markets via a 2016 regulation to allow New York farmers, food processors, and producers of forest products to apply for a “New York State Grown and Certified Seal” for their product labels and associated advertisements. N.Y. COMP. CODES R. & REGS. tit. 1, § 161.1 (2016). The program sought to “assure[] consumers that the food they are buying is local and produced to a higher standard by requiring participating producers to adopt food safety standards and enroll in an environmental management program.” *New York State Grown & Certified*, N.Y. STATE, <https://certified.ny.gov/> [<https://perma.cc/C2S5-AJJK>] (last visited Mar. 20, 2026). To qualify for the seal, farm products must be “solely” from New York. N.Y. COMP. CODES R. & REGS. tit. 1, § 161.2(b). Forest products (e.g., trees, logs, firewood, lumber, and paper) may either consist solely of New York trees or be manufactured in New York from trees grown predominantly in New York. *See id.* § 161.2(c). Additionally, the producers must be “verified to grow, harvest, raise, process, [or] manufacture the product using good agricultural or handling practices,” or “operate[] in an environmentally responsible manner.” *Id.* § 161.1.

⁴³¹ S. 7638A, 2025–26 Leg., Reg. Sess. § 1.1(a) (N.Y. 2025).

“based in New York State” who meets one of the seven articulated values.⁴³²

The last change—adding the “best value” purchasing option—was a top priority of the NYS Good Food Purchasing Coalition. This coalition was comprised of more than 70 local and national food systems advocates, including NRDC, and led by the well-respected nonprofit Community Food Advocates.⁴³³ Additionally, the City of New York, through the Mayor’s Office of Food Policy, pushed to strengthen the Good Food NY Bill language by adding best value to provide “cities great flexibility to buy better food.”⁴³⁴ As noted above, New York City procurement laws allow best value purchasing—mirroring state law—where a bid or proposal represents the

⁴³² *Id.* The 2025 bill made several other significant changes from the previous version. First, it added an “or” instead of an “and” after the list of environmental practices set forth in § 1.1(c)(ii). This change allowed a vendor to meet the newly title “environmental resilience” value by meeting only one of the seven environmental practices spelled out in the bill, as opposed to having to meet all them as previously required under this sub-provision. *Id.* Second, recognizing that the bill will only be effective if localities can verify that the vendors are meeting the new values-based standards, the 2025 bill inserted the word “facility” in front of the word “address” in the section requiring that food vendors submit “relevant supply chain data” with its bid, at the time of contract execution as well as annually and upon any changes to supplier information. *Id.* § 1.1(b)(i). Thus, the new language stated that this data “shall include the name and facility address of each supplier, distributor, processor, and producer involved in the provision of the products that the bidder will supply.” *Id.* Third, the bill changed the language regarding animal welfare certification. Specifically, because the U.S.D.A. only informally recognizes certification programs on educational websites and through a formal regulatory mechanism, the 2025 bill removed the reference to the U.S.D.A. and simply kept the final clause of that provision. *See id.* § 1.1(c)(vi). Thus, the revised language stated be “requiring humane handling and slaughter, as demonstrated by enrollment in an independent animal welfare certification program with regular, third-party on-farm audits assessing a producer’s compliance with one hundred percent of the program’s welfare standards. . . .” *Id.*

⁴³³ *See, e.g.*, Memo from Mark A. Izeman, NRDC to New York State Executive Chamber, “Re: Good Food NY Bill (S.6955A/A.7264)” (November 20, 2024) (on file with author); *Good Food Purchasing Program*, COMMUNITY FOOD ADVOCATES, <https://www.foodadvocates.org/good-food-purchasing-program> (last visited Apr. 25, 2026).

⁴³⁴ FOOD FORWARD NYC, *supra* note 207, at 8.

best value to the City by optimizing “quality, cost and efficiency.”⁴³⁵ And, as discussed, the New York City Mayor’s office, in 2024 and 2025 directives, emphasized the importance of utilizing “best value” bids or proposals in procuring many goods and services.⁴³⁶ Further, the City has also begun to undertake some types of food purchasing under the existing definition of best value in GML § 103 and SFL § 165.⁴³⁷ Also, the large purchasing power of New York City was one key reason advocates welcomed their lobbying involvement to explicitly link “best value” to the seven values contained in the Good Food NY Bill. Indeed, New York City currently spends more than \$627 million on food each year and is one of the largest institutional food buyers in the nation—remarkably, NYC public schools alone serve roughly 900,000 meals per day.⁴³⁸

In the end, the version of the Good Food NY Bill, updated towards the end of the 2025 legislative session, was much narrower in scope than originally proposed in 2022. As discussed, to take advantage of the 10% price preference, the bill was amended to require vendors (a) to be “New York based; (b) meet one of the seven values; and (c) if choosing “local economies” as one of the seven values, the vendor must ensure that at least 51% of or more of the raw agricultural materials have been grown, harvested, processed and manufactured within 100 miles of the buyer—versus 100-200 miles (presumably) from the border of the state—or be enrolled in the state’s Grown & Certified program.

⁴³⁵ See N.Y.C. Charter § 311(i)(2); Procurement Policy Board Rule 3-02 (b)(2)(iv)(B) [hereinafter PPBR]; PPBR 3-02(o)(1)(ii); PPBR 3-03(a).

⁴³⁶ See *supra* notes 388 and 391.

⁴³⁷ See N.Y.C. OFF. OF FOOD POL’Y, NYC FOOD AND CLIMATE STRATEGY 8, 14 (2025), https://www.nyc.gov/assets/foodpolicy/downloads/pdf/foodandclimates-trategy_final.pdf [<https://perma.cc/7AMD-9B3T>] [hereinafter NYC FOOD AND CLIMATE STRATEGY]; FOOD FORWARD NYC, *supra* note 207, at 12; N.Y.C. MAYOR’S OFF. OF FOOD POL’Y & N.Y.C. MAYOR’S OFF. OF CONT. SERV., *supra* note 419, at 1-2 (“In addition to [authority under GML 103 (8)(a)], purchasing agencies may use the new ‘best value’ provisions of GML § 103 to craft solicitations that consider the quality and efficiency of the food being purchased, such as whether the product is being grown, processed, or distributed by a New York State vendor.”).

⁴³⁸ See NYC PUBLIC SCHOOLS, *Funding Our Schools*, <https://www.schools.nyc.gov/about-us/funding/funding-our-schools> [<https://perma.cc/VH36-RNV6>]; FOOD AND CLIMATE STRATEGY, *supra* note 437, at 8.

To be sure, it does not appear that any state law around the nation currently provides an explicit preference for buying from out-of-state food farms that meet “good food” values. But it may be difficult to identify a sufficient number of in-state sources that can currently meet the supply and specification needs of large purchasers (like New York City) while also meeting some of the other good food values. Further, while buying locally grown food has important objectives—and is rightly part of the good food standards matrix—research has shown that it is not inherently better from an environmental standpoint.⁴³⁹ Indeed, with respect to reducing climate emissions, purchasing from local farms is likely not the most effective approach. For example, transportation typically accounts for less than 10% of food-related greenhouse gas emissions for most products.⁴⁴⁰ The majority of greenhouse emissions are driven by what is produced, with animal-based foods often being significantly more carbon-intensive compared to plant-based foods.⁴⁴¹ Even shifting only a portion of meat and dairy government purchases to plant-based products could significantly reduce GHG emissions—as well as, among the other benefits, improve public health, conserve water, decrease deforestation and reduce animal suffering.⁴⁴² Additionally,

⁴³⁹ See, e.g., USDA, LOCAL FOOD SYSTEMS: CONCEPTS, IMPACTS AND ISSUES, ECON. RSCH. REPORT 97, at v (May 2010).

⁴⁴⁰ See, e.g., Hannah Ritchie, *Eating Local is Still Not a Good Way to Reduce the Carbon Footprint of Your Diet*, SUSTAINABILITY BY NUMBERS (Dec. 5, 2022), <https://www.sustainabilitybynumbers.com/p/food-miles> [<https://perma.cc/KW85-MB9P>]; see also ENTHOVEN AND VAN DEN BROECK, LOCAL FOOD SYSTEMS: REVIEWING TWO DECADES OF RESEARCH, AGRICULTURAL SYSTEMS 193: 1103226 at 9 (stating that GHG from transport represent only 6% globally).

⁴⁴¹ Hannah Ritchie, *Eating Local is Still Not a Good Way to Reduce the Carbon Footprint of Your Diet*, SUBSTACK (Dec. 5, 2022), <https://hannahritchie.substack.com/p/food-miles>; Xiaoming Xu et al, *Global greenhouse gas emissions from animal-based foods are twice those of plant-based foods*, NATURE FOOD 2, 724-732 (2021);

⁴⁴² CHLOË WATERMAN, RACHEL CLARK & STEVEN SCHOONER, FOOD PROCUREMENT: AN ESSENTIAL INGREDIENT TO MITIGATING CLIMATE CHANGE AND ENHANCING PUBLIC HEALTH, CONT. MGMT. 52 (Feb. 2024); Peter Lehner, *Feds Can Fight Climate Change By Buying the Right Food*, EARTHJUSTICE (Nov. 29, 2023) (“The U.S. could significantly reduce greenhouse gas emissions by shifting the types of food the government procures, particularly by purchasing less meat (particularly beef), of which many people eat amounts greater than

buying and trading among states, often adjacent, is often essential for supporting the regional economy (for example, the New York, New Jersey and Connecticut region), addressing nutritional needs, food security, and resilience.⁴⁴³

At the same time, the addition of the best value option represented an important strengthening of the bill to allow municipalities like New York City to fully take advantage of some preference for food meeting the good food values—including using best value purchasing to favor in-state farms and vendors. And including best value methodology is consistent with the increased usage of this more sophisticated buying option at the federal, state and local levels.

While all these changes were aimed at securing the support of key stakeholders, along with some necessary clarifications, the fate of the bill moving forward remains uncertain. In particular, the formidable New York Farm Bureau continued to oppose the bill at the end of the 2025 Session despite regular conversations and outreach by legislative leaders and advocates.⁴⁴⁴ Still, in further efforts to accommodate the Farm Bureau, the bill was reintroduced for the 2026 Legislative Session with one significant and somewhat controversial change long pushed by this constituency: adding “dairy products” to the list of articulated food groups that “promote health and well being” in the nutrition standard section.⁴⁴⁵ Despite all these

recommended by the U.S. dietary guidelines.”) <https://earthjustice.org/experts/peter-lehner/feds-can-fight-climate-change-by-buying-the-right-food>; PETER H. LEHNER & NATHAN A. ROSENBERG, *FARMING FOR OUR FUTURE: THE SCIENCE, LAW AND POLICY OF CLIMATE-NEUTRAL AGRICULTURE*, ENV'T L. INST. 238 (2021) (“[A] shift to more plant-forward consumption would reduce methane emissions from cattle and manure, nitrous oxide emissions from animal feed production, and deforestation and grassland conversion for cattle pasture and animal feed cropland.”).

⁴⁴³ See e.g., C. M. Honan, A food nonprofit’s response to COVID-19: The Common Market leans on its mission to serve, *J. AGRICULTURE, FOOD SYS., CMTY. DEV.* 10(2) 279-282. <https://www.foodsystemsjournal.org/index.php/fsj/article/view/929>; Marta Andhov et al, *How To Procure Sustainable Food And Include Farmers In Public Procurement?* 70 (2024).

⁴⁴⁴ See Memorandum of Opposition from N.Y. Farm Bureau, at 1–2 (May 27, 2025).

⁴⁴⁵ See S. 7638-B, 2025–2026 Leg., Reg. Sess. (N.Y. 2025); A. 8091-B, 2025–2026 Leg., Reg. Sess. (N.Y. 2025). This 2026 version of the bill passed both

concessions, if enacted, this scaled back bill would still be the first such comprehensive municipal-focused procurement bill in the nation.

V. LEGAL AND POLICY ISSUES RELATED TO THE GOOD FOOD NY BILL

In this Part, I discuss three top legal and policy concerns raised by legislators and other stakeholders in advancing the Good Food NY Bill over the last several years. Regardless of the ultimate fate of the New York bill, it is likely that these and similar issues could be surfaced in other jurisdictions and localities seeking to craft their own values-based food purchasing legislation. Importantly, however, like other sections of this article, the discussion here is not intended to be exhaustive, but rather to highlight some leading concerns surrounding recent legislative deliberations in New York.

Specifically, in Part V.A. below, I analyze potential Dormant Commerce Clause issues under the U.S. Constitution. Next, I discuss what federal procurement regulations local governments must follow when receiving federal food monies, and how these federal rules intersect with state and local purchasing laws. And finally, I address whether any proposed state values-based standards for food purchasing conflict with federal or state laws governing agricultural production methods.

A. *The Dormant Commerce Clause and the Market Participant Exception*

One question that emerged from the Good Food NY Bill debates is whether this bill could run afoul of the U.S. Constitution, specifically the Dormant Commerce Clause (“D.C.C.”), because the Bill preferences in-state vendors over out-of-state food sources. The short answer is likely no, as currently formulated.⁴⁴⁶

houses of the New York Legislature in early June 2026, and now awaits action by Governor Hochul.

⁴⁴⁶ Other potential legal obstacles in the overall context of local procurement preferencing include challenges under the Privileges and Immunities, Equal Protection, Due Process and Foreign Relations Clauses of the U.S. Constitution. See Amy S. Ackerman, *Buy Healthy, Buy Local: An Analysis of Potential Legal*

The U.S. Constitution grants Congress the explicit authority to “regulate Commerce with foreign nations, and among the several

Challenges to State and Local Government Local Purchase Preferences, 43 URB. L. 1015, 1022–23 (2011). These issues have not been raised in the efforts to advance the Good Food NY Bill, and are not addressed in this article. However, it is worth highlighting that the New York bill’s “racial equity” value could pose legal challenges in the wake of a recent U.S. Supreme Court ruling. As noted in the text above, the definition of this standard in the 2022 version of the bill was linked exclusively to the definition of minority and women-owned business enterprises as defined in existing NYS Executive Law. S.7534, 2021–22 Leg., Reg. Sess. § 1.1(c)(iii) (N.Y. 2021); N.Y. Exec. Law § 310(7)–(8), (15) (McKinney 2025). This definition was later amended to add the phrase “or socially disadvantaged farms,” which is defined as “individual who have been subject to discrimination by virtue of their membership of a particular group, which may induce but is not limited to Black or African American, American Indian or Alaska Native, Hispanic or Latino, and Asian or Pacific Islander. S. 7638A, 2025–26 Leg., Reg. Sess. § 1.1(c)(iii) (N.Y. 2025). In the 2023 case *Students for Fair Admissions, Inc v. President and Fellows of Harvard College*, 600 U.S. 181, 198, 230 (2023) the U.S. Supreme Court ruled that the “race-based” admissions programs at Harvard and the University of North Carolina violated the Equal Protection Clause of the Fourteenth Amendment of the Constitution as well as Title VI of the Civil Rights Act of 1964. The Court, however, also concluded that the ruling should not prohibit “universities from considering an applicant’s discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise.” *Id.* 230-31. In the wake of this decision, some lower court rulings suggest that government procurement preferences similar to those contained in the Good Food NY Bill – and perhaps existing New York public procurement preferences – could be legally vulnerable. *See, e.g.,* *Mid-America Milling Company v. U.S. Department of Transportation*, 2024 WL 4267183 at *1, *10 (Sept 23, 2024), where a District Court in Kentucky held that the federal Department of Transportation’s “Disadvantage Business Enterprise Program,” which requires a certain percentage of federal highway and transit funds to be used for “disadvantage business enterprises,” likely violated the Equal Protection Clause. This ruling was rendered moot in March 2026 after the underlying DOT program was altered. *See Memorandum Opinion And Order*, *Mid-America Milling Company v. U.S. Department of Transportation* (Mar. 19, 2026), <https://cases.justia.com/federal/district-courts/kentucky/kyedce/3:2023cv00072/103125/140/0.pdf?ts=1774021966>; *see also* *Ultima Serbs. Corp v. U.S. Dep’t of Agric.*, 683 F.Supp.3d 745, 752–53 774–75 (E.D.T.N. 2023) (finding that the U.S. Small Business Administration (SBA)’s use of a “‘rebuttal presumption’ of social disadvantage for certain minority groups” who seek to qualify for the Department’s 8(a) Business Development Program – which awards some federal government contracts on a preferred basis for such groups – was unconstitutional under the Fifth Amendment’s guarantee of equal protection). This SPA stopped utilizing this presumption after the ruling. R. Corinne Blackford, *SBA’s 8(a) Business Development Program: Structure and Current Issues*, CONG. RSCH. SERV. 13–14 (Sep. 19, 2024).

States.”⁴⁴⁷ In early cases analyzing this particular grant of power, the U.S. Supreme Court recognized that the “Clause not only vests Congress with the power to regulate interstate trade; the Clause also ‘contain[s] a further, negative command’” forbidding enforcement of certain state regulations even when Congress itself has never legislated on the particular issue.⁴⁴⁸ Eventually, the Court held that “state laws offend the Commerce Clause when they seek to ‘build up. . . domestic commerce’ through ‘burdens upon the industry and business of other states.’”⁴⁴⁹ This “negative implication” is known as the “Dormant Commerce Clause” and is “intended to prevent “economic protectionism—that is regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.”⁴⁵⁰

To determine whether a state law or action violates the D.C.C., a court generally first asks whether the law “discriminates against interstate commerce on its face”—that is, it applies “differential treatment to in-state versus out-of-state economic interests that benefit the former and burden the latter.”⁴⁵¹ Such a law is considered “per se invalid” unless the state government has “no other means to advance a legitimate local purpose.”⁴⁵² A court may determine that a state action or law violates the D.C.C. even if it is not plainly apparent on its face if it has a discriminatory purpose or effect against out-of-state entities.⁴⁵³ But a non-discriminatory law that “only burdens interstate commerce” is reviewed under the so-called “Pike balancing test” and “will only be ‘struck down if the burden

⁴⁴⁷ U.S. CONST. art. I, § 8, cl. 3.

⁴⁴⁸ See *Nat’l. Pork Producers Council v. Ross*, 598 U.S. 356, 368 (2023).

⁴⁴⁹ *Id.* at 369.

⁴⁵⁰ *Restaurant Law Center v. City of New York*, 90 F.4th 101, 118 (2024) (quoting *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 273); see also *Nat’l. Pork*, 598 U.S. at 369 (discussing dormant Commerce Clause jurisprudence).

⁴⁵¹ *Nat’l. Pork*, 598 U.S. at 331.

⁴⁵² *Rest. L. Ctr.*, 90 F.4th at 118.

⁴⁵³ See *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

imposed on interstate commerce clearly exceeds the putative local gain.”⁴⁵⁴

As discussed, under the most recent version (2025) of the New York Good Food bill, vendors must (1) be “New York based; (2) meet one of the seven values; and (3) if choosing “local economies” as one of seven values, ensure that at least 51% of or more of the raw agricultural materials have been grown, harvested, processed and manufactured within 100 miles of the buyer or be enrolled in the state’s Grown & Certified program.⁴⁵⁵ Earlier versions of the bill (2023 and 2024), did not include the “based in New York” language requirement, but still required compliance with a “local economies” definition that specified that the majority of “raw agricultural materials” come from within 100 miles for produce or 200 miles for animal products.⁴⁵⁶ Thus, at least on the surface, either version of the bill has the potential to run into a D.C.C. challenge because it would exclude all, or a very large majority, of out-of-state vendors. In the final analysis, however, either formulation of the legislation bill would likely survive a constitutional challenge under the well-established “market participant” exception to the D.C.C.

First recognized in 1976 by the U.S. Supreme Court in *Hughes v. Alexandria Scrap Corporation*, the “market participant” exception permits state action that would otherwise violate the D.C.C. if the state is itself participating in the commerce at issue.⁴⁵⁷ When a state or local government enters the market as a participant, and not merely as a regulator, “it is not subject to the restraints of the Commerce Clause.”⁴⁵⁸ This exception is due, in large part, to the Court’s recognition that “nothing in the purpose animating the Commerce Clause prohibits a State, in the absence of congressional action,

⁴⁵⁴ *Id.* (quoting *Town of Southold v. Town of E. Hampton*, 477 F.3d 38, 47 (2d Cir. 2007); see also *Nat’l Pork*, 598 U.S. at 377 (discussing the Pike line of cases); Congressional Research Service, *Supreme Court Narrows Dormant Commerce Clause and Upholds State Animal Welfare Law* (Aug. 31, 2023), https://www.congress.gov/crs_external_products/LSB/PDF/LSB11031/LSB11031.1.pdf

⁴⁵⁵ N.Y. A. 8091-A, 2025–2026 Reg. Sess. (Apr. 25, 2025); N.Y. S. 7638-A, 2025–2026 Reg. Sess. (Apr. 24, 2025).

⁴⁵⁶ A7264-A; S6955-A (May 16, 2023).

⁴⁵⁷ See generally, *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794 (1976); *S.-Cent. Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82 (1984).

⁴⁵⁸ *White v. Mass. Council of Constr. Employers, Inc.*, 460 U.S. 204, 208 (1983).

from participating in the market and exercising the right to favor its own citizens over others.”⁴⁵⁹

To determine if the “market participant” exception applies with respect to the Good Food NY Bill, case law indicates there must be an overlapping two-step analysis.⁴⁶⁰ First, it must be determined whether there is activity by the “state” in the market.⁴⁶¹ This involves determining whether cities and other political subdivisions covered under the bill qualify as “the state.”⁴⁶² A second step is whether the action taken by “the state” qualifies as participation in the market, or whether it is instead regulating the market.⁴⁶³ I address these two questions below.

1. Local Governments & Municipalities Are “the State”

The U.S. Supreme Court has broadly held that “when a state or local government enters the market as a participant it is not subject to the restraints of the Commerce Clause.”⁴⁶⁴ And the U.S. Courts of Appeals for the Second, Third, Fourth, Eighth, Ninth and D.C. Circuits all have viewed various local government entities as units of the state in the context of the market participation exception.⁴⁶⁵ Further, there is caselaw from these appellate courts specifically upholding local procurement preference laws as not violative of the D.C.C. because the state, via its local government units, was participating in the market. Given the importance of this constitutional question, and the complexity of the current Good Food NY Bill, it

⁴⁵⁹ *Id.* at 207.

⁴⁶⁰ *See, e.g., Nat’l Solid Wastes Mgmt. Ass’n v. Williams*, 146 F.3d 595, 599–600 (8th Cir. 1998); *Smith Setzer & Sons, Inc. v. S.C. Procurement Review Panel*, 20 F.3d 131, 1319–20 (4th Cir. 1994).

⁴⁶¹ *See, e.g., Smith Setzer*, 20 F.3d at 1319–20.

⁴⁶² *See id.*; *Trojan Techs., Inc. v. Pennsylvania*, 916 F.2d 903, 910–911 (3d Cir. 1990).

⁴⁶³ *See Smith Setzer* at 1318–1320; *Trojan Techs.*, 916 F.2d at 910–911; *Hughes*, 426 U.S. at 800–814.

⁴⁶⁴ *White*, 460 U.S. at 208 (emphasis added).

⁴⁶⁵ *See Incorp. Village of Rockville Centre v. Town of Hempstead*, 196 F.3d 395, 397, 400 (2d Cir. 1999); *Trojan Techs.*, 916 F.2d at 911; *Smith*, 20 F.3d at 1319–20; *see Nat’l Solid Waste Mgmt. Ass’n v. Williams*, 146 F.3d 595, 599 (8th Cir. 1998).

is worth examining several of these Circuit procurement rulings in some depth.

In one case from 1990, *Trojan Technologies Inc. v. The Commonwealth of Pennsylvania*, the U.S. Court of Appeals for the Third Circuit addressed the applicability of the “market participant” exception to state and local government units.⁴⁶⁶ There, a Canadian corporation challenged a Pennsylvania statute that required steel suppliers contracting with “public agencies,” which included both state agencies and all local entities, for public works contracts to only provide products with American-made steel.⁴⁶⁷ Several municipalities had purchased certain pipes for waste-water treatment facilities from the Canadian company’s Pennsylvania distributor, but the state Attorney General sent the company a letter asking it to certify that the pipes met the statute’s specifications.⁴⁶⁸ The company subsequently filed suit, seeking a declaration that the statute was unconstitutional under the D.C.C.⁴⁶⁹

In denying this claim, the Third Circuit began by rejecting the company’s contention that the municipalities involved in the case were not “the state” for purposes of the market participant exception.⁴⁷⁰ The court stated, instead, that there is “no compelling analytical difference between a local government unit and central state agencies.”⁴⁷¹ Therefore, the court found that the local governments and municipalities involved in the purchase of steel at issue were “the state.”⁴⁷² As such, the court concluded that these local entities, as the state, have the same right to specify suppliers of steel when they are the ones entering into the contract.⁴⁷³ Since the local governments are purchasing steel, they are “acting as parties to a

⁴⁶⁶ *Trojan Techs.*, 916 F.2d at 910.

⁴⁶⁷ *Id.* at 904–05.

⁴⁶⁸ *See id.* at 905.

⁴⁶⁹ *See id.*

⁴⁷⁰ *Id.* at 910–11.

⁴⁷¹ *Id.* at 911.

⁴⁷² *Id.*

⁴⁷³ *Id.* at 910.

commercial contract” and thus, are a market participant.⁴⁷⁴ Accordingly, the Circuit held that the statute does not intrude upon the D.C.C.⁴⁷⁵

Similarly, in the 1992 case *Big Country Food, Inc. v. Board of Educ. of Anchorage School District*, the Court of Appeals for the Ninth Circuit discussed the applicability of the “market participant” exception to school districts, an even smaller unit of local government.⁴⁷⁶ At issue in the case was, what the court called, an in-state “bidding preference”—a statute that required schools receiving state funds to select bids for the purchase of dairy products that were produced in the state if the price was not more than 7% higher than other products of similar quality.⁴⁷⁷ Under this statute, the Anchorage school district awarded a contract to an Alaskan milk producer, rather than to another business that obtained its milk from the State of Washington that had made a lower cost bid.⁴⁷⁸ The disappointed bidder brought suit.⁴⁷⁹

In its ruling, the Ninth Circuit held that these school districts do qualify as a subdivision of the state for purposes of the market participant exception.⁴⁸⁰ Specifically, the court stated that “political subdivisions exist at the will of the state” and a state should not be penalized for funneling power through more localized sources because it promotes efficiency.⁴⁸¹ The court wrote that the state, via the school districts entering into the procurement contracts, was “simply making a decision as to what it will pay for a product bought on the open market.”⁴⁸² Because of this, the school districts qualified as “the state” as far as the “market participant” analysis is

⁴⁷⁴ *Id.*

⁴⁷⁵ *See id.* at 910–12.

⁴⁷⁶ *See Big Country Foods, Inc. v. Bd. of Educ. of Anchorage Sch. Dist.*, 952 F.2d 1173, 1177–79 (9th Cir. 1992).

⁴⁷⁷ *See id.* at 1175.

⁴⁷⁸ *See id.*

⁴⁷⁹ *See id.*

⁴⁸⁰ *See id.* at 1179.

⁴⁸¹ *Id.*

⁴⁸² *Id.* at 1181.

concerned.⁴⁸³ Therefore, the procurement by the schools did not violate the D.C.C.⁴⁸⁴

One Seventh Circuit case from 1984, however, held that certain types of in-state preference laws for localities could fall outside the market participant exception. In *W.C.M. Window Co, Inc. v. Bernardi*, the Seventh Circuit analyzed an Illinois law requiring that all contractors working on any public works project or improvement for the State or other local government unit must only employ Illinois laborers, unless they are not available or incapable of undertaking the specific work.⁴⁸⁵ The specific challenge in this case was brought by an Illinois corporation hired by a local public school board in the state. At issue was that the Illinois corporation had subcontracted some window-replacement work to a company employing Missouri residents.⁴⁸⁶ The director of the Illinois Department of Labor sued to enjoin the company from violating the state's worker preference law.⁴⁸⁷

The Circuit Court concluded that the law violated the D.C.C. because the law applied to all public construction contracts in the state—even if the purchaser is the “local dog catcher.”⁴⁸⁸ This meant, as the Court of Appeals wrote, that Illinois was really acting as a regulator, “telling thousands of local government units that they must not give construction contracts to employers of nonresidents.”⁴⁸⁹ The Court indicated in dicta, however, that the law would not violate the D.C.C. if it was limited to construction projects financed or administered in whole or in part by the State of Illinois, because then the state, via the local governments, would be a market participant, not a regulator.⁴⁹⁰

⁴⁸³ See *id.* at 1179.

⁴⁸⁴ See *id.* at 1180–81.

⁴⁸⁵ See *W.C.M. Window Co. v. Bernardi*, 730 F.2d 486, 489 (7th Cir. 1984).

⁴⁸⁶ See *id.* at 489.

⁴⁸⁷ See *id.* at 489–490.

⁴⁸⁸ *Id.* at 495–496.

⁴⁸⁹ *Id.* at 495.

⁴⁹⁰ See *id.* Indeed, a recent ruling from U.S District Court for the Central District of Illinois, *Agri-Systems Inc. v. Dep't of Lab*, upheld a revised version of the Illinois employment preference law under the D.C.C. based largely on this dicta from the Seventh Circuit's *W.C.M.* decision. See *Agri-Systems Inc. v. Dep't of Lab.*, No. 22-CV-1085, 2023 WL 2824905, at *1 (C.D. Ill. Mar. 3, 2023). This

The Seventh Circuit's ruling, however, is an outlier in addressing whether localities should be considered part of the state in commerce clause issues. In addition to the *Trojan* and *Big Country* cases discussed above, the reasoning of the Seventh Circuit on this point was also rejected in a 1994 Fourth Circuit case, *Smith Setzer & Sons Inc., v. South Carolina Procurement Review Panel*.⁴⁹¹ In this case, a North Carolina company unsuccessfully challenged a South Carolina's price preference procurement law for in-state products after losing a bid to an in-state vendor.⁴⁹² Under this South Carolina scheme, competitive procurements by state governmental bodies "shall be of end-products made, manufactured or grown" in the state over goods from other states, if available and if within a 5% price preference.⁴⁹³ The procurement also directed state entities to purchase U.S. goods over foreign goods if within 2% price preference.⁴⁹⁴ At issue in this case were contracts for the supply of concrete culvert pipes put out to bid by the South Carolina Division of General Services to supply state agencies and "local political subdivisions" that voluntarily chose to purchase such contracts under the competitive solicitations.⁴⁹⁵ Although the plaintiff Smith Setzer was awarded several contracts, it lost out on others because of the state's

district court case evaluated new statutory requirement that contractors use at least 90% Illinois laborers on all public works during a period of "excessive unemployment." *Id.* The Act defined these public works projects as any construction or improvement project for the state or any political subdivision of the state, that was "funded or financed in whole or in part with state funds." *Id.* The district court found that this updated version of the Illinois law did not violate the D.C.C because, again primarily based on the Seventh Circuit's *W.C.M.* ruling, the preference requirement at issue in *Agri-Systems* applied only to projects where at least some of the funding was being administered by the state—even if it was actually being carried out by local government units. *Id.* at *10.

⁴⁹¹ See *Smith Setzer & Sons, Inc. v. S.C. Procurement Rev. Panel*, 20 F.3d 1311 (4th Cir. 1994).

⁴⁹² See *id.* at 1314–16.

⁴⁹³ See *id.* at 1315.

⁴⁹⁴ See *id.* The law also established an additional 1-2% price preference for certain "resident vendors" addition. This 1-2% cost preference, which hinged on the total amount of the contract price, could be applied on top of the baseline 5% in-state price preference. See *id.*

⁴⁹⁵ See *id.* at 1319.

preference scheme.⁴⁹⁶ The legal challenge alleged, among other things, that the law violated the Commerce Clause because the state “acted as a market regulator in this purchasing scheme because of the ‘regulatory effect’ on local governments that resulted from the ability of local governments, at their option, to purchase their own concrete pipe requirements under the State contracts awarded.”⁴⁹⁷

In ruling against the plaintiff North Carolina company, the Circuit Court first rejected the position of the Seventh Circuit in the *W.C.M.* case that under the commerce clause localities could be considered separate from the state. While pointing out that the two legal schemes were “factually distinguishable,” largely because of the mandatory nature of the Illinois law, it also agreed with the then recent Third and Ninth Circuits’ rulings that drawing a line between “state and local governments simply does not make sense in this constitutional matter.”⁴⁹⁸ The Fourth Circuit then went on to conclude that South Carolina had “entered the market to purchase a product for its own consumption, an action clearly outside the scope of the negative Commerce Clause.”⁴⁹⁹ And further it found that the “free ride” that localities could take advantage of in the culvert pipe procurements was not regulatory in nature under the D.C.C.⁵⁰⁰

In sum, it appears that under both the Supreme Court and virtually all circuit courts that have considered the issue of distinguishing localities from the state—including the Second Circuit—that the

⁴⁹⁶ See *id.* at 1316.

⁴⁹⁷ *Id.* at 1318.

⁴⁹⁸ *Id.* at 1319 (citing *Big Country Foods v. Board of Educ.*, 952 F.2d 1173, 1179 (9th Cir. 1992) and *Trojan Techs., Inc. v. Pennsylvania*, 916 F.2d 903, 911 (3rd Cir. 1990)); The Eighth Circuit also declined to follow the reasoning of the Seventh Circuit with regard to the distinction between state and local governmental bodies under the market participant exception in a 1998 case. See *Nat’l. Solid Waste Mgmt. v. Williams*, 146 F.3d 595 (1998). At issue was a statute that required local county governments to implement comprehensive waste management plans. *Id.* at 597. Once the county chose a facility to receive waste, all public entities in the county had to deliver their waste to that facility. *Id.* The court wrote that the state, via statute, was directing the purchasing behavior of local government units, over which the state has authority. *Id.* at 599. As such, these local government entities were created and controlled by the state and should therefore be considered “the state” for purposes of a D.C.C. analysis. *Id.*

⁴⁹⁹ See *Smith Setzer & Sons, Inc. v. S.C. Procurement Rev. Panel*, 20 F.3d 1311, 1320 (4th Cir. 1994).

⁵⁰⁰ *Id.*

use of values-based preferences by political subdivisions under the Good Food NY Bill would satisfy this first step of the market exemption analysis. Even under the outlier Seventh Circuit ruling in *W.C.M.*, the New York bill set forth a very different statutory scheme than the one analyzed in that case—namely, a voluntary preferencing approach versus the mandatory hiring requirement.

2. Participation or Regulation

We now turn to the second, interconnected step in the market exception analysis for the Good Food NY Bill—namely whether any of the provisions of Good Food NY Bill could be viewed by the court as “regulating” the market, versus simply have municipalities “participating” in it. More specifically, the applicability of this D.C.C. exception under case law turns on whether the state, in enacting some kind of preference for its own citizens, is acting as a “market regulator” or “market participant.”⁵⁰¹ The state is generally viewed as a “regulator” when it is exercising its “taxing, regulatory, or other police powers.”⁵⁰² If acting as a regulator, then the state cannot permissibly discriminate against interstate commerce.⁵⁰³

For example, in the case of *South-Central Timber Development v. Wunnicke*, the U.S. Supreme Court struck down an Alaska law that required timber taken from state lands be processed in-state before being exported.⁵⁰⁴ The Court found that, even though the state was participating, to an extent, in the initial commerce by subsidizing the purchase of the timber, the mandate to use an in-state processor rather than taking the timber out of state for processing was a “downstream” regulation of the timber-processing industry that every entity was forced to abide by.⁵⁰⁵ Therefore, the “market participant” exception did not apply.⁵⁰⁶

Similar reasoning is present in the *W.C.M.* case discussed above, where the Seventh Circuit noted that the compulsory nature

⁵⁰¹ See *S.-Cent. Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82, 93 (1984).

⁵⁰² See *Smith Setzer & Sons, Inc.*, 20 F.3d at 1318.

⁵⁰³ See *id.*

⁵⁰⁴ See *S.-Cent. Timber Dev.*, 467 U.S. at 84.

⁵⁰⁵ See *id.* at 95.

⁵⁰⁶ See *id.*

of certain provisions of Illinois's previous employment statute—requiring that public works projects employ Illinois laborers regardless of state funding—pushed the statute towards being a “market regulation” rather than mere participation.⁵⁰⁷ The market participant exception could not protect this particular statute because, by not owning any of the funds used for the projects at issue, the state was merely regulating hiring preferences, rather than participating in the project.⁵⁰⁸ However, if a challenged state action constitutes direct state participation in the market, then the inquiry ends and the D.C.C. does not apply.⁵⁰⁹ In cases where the U.S. Supreme Court has found that states or municipalities acted as a “participant,” their actions involved “participating directly in some aspect of the market as a purchaser . . . and the alleged discriminatory effects on the interstate market flowed from these actions.”⁵¹⁰

For example, in the 1976 case *Hughes v. Alexandria Scrap Corporation*, the Supreme Court upheld a complex Maryland statutory program aimed at resolving the issue of abandoned cars, which imposed higher documentation requirements for out-of-state participants.⁵¹¹ Under this Maryland program, the state would pay a “bounty” to anyone who processed a state-titled junk car into scrap metal.⁵¹² The program permitted both in-state and out-of-state processors to participate but required additional documentation proving ownership of the vehicle from out-of-state participants.⁵¹³ The Court recognized the program might present some “burden” on interstate commerce.⁵¹⁴ However, the Court held that since Maryland itself had entered the market and was, as a purchaser, favoring

⁵⁰⁷ See *W.C.M. Window Co. v. Bernardi*, 730 F.2d 486, 489 (7th Cir. 1984); see also *Smith*, 20 F.3d at 1319 (noting that the government was acting more like a market participant since there was not a mandatory regulatory scheme).

⁵⁰⁸ *W.C.M.*, 730 F.2d at 494–95.

⁵⁰⁹ See *Smith Setzer & Sons, Inc. v. S.C. Procurement Rev. Panel*, 20 F.3d 1311, 1319 (4th Cir. 1994) (citing *White v. Council of Constr. Employers, Inc.*, 460 U.S. 204, 208 (1983)).

⁵¹⁰ *Atlantic Coast Demolition & Recycling, Inc. v. Board of Chosen Freeholders of Atlantic Cnty.*, 48 F.3d 701, 716 (3d Cir. 1995).

⁵¹¹ See *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794, 794 (1976).

⁵¹² See *id.* at 797–801.

⁵¹³ See *id.* at 799–801.

⁵¹⁴ See *id.* at 807.

transactions between itself and its own citizens or businesses within the state, this was permissible under the Commerce Clause.⁵¹⁵

Similarly, in the 2018 case of *Asante v. California Department Of Health Care Services*, the Ninth Circuit upheld a California “Medi-Cal” program—the vehicle for the state’s participation in the federal Medicare program—that charged different reimbursement rates for those insured as beneficiaries under the program when they used services at in-state versus out-of-state hospitals.⁵¹⁶ In doing so, the court pointed out that those receiving benefits through the program did so voluntarily, and there was no requirement to deal with the state’s department of health.⁵¹⁷ Furthermore, the state health department, in choosing reimbursement rates, was acting in much the same manner as a private insurer participating in the market.⁵¹⁸ The court noted that this activity was much the same as the Alaskan price preference statute that the Ninth Circuit upheld in *Big Country Foods*, discussed earlier, because both the schools and the department of health were choosing which entities to purchase benefits from.⁵¹⁹ Thus, by participating in the market directly, the state, via the department of health, was not in violation of the D.C.C.⁵²⁰

Turning back to the Good Food NY Bill, it appears that, overall, the legislation would not be viewed by the courts as New York State regulating the marketplace, but rather as allowing localities to voluntarily choose to apply values-based standards to their food purchasing. The bill does not mandate that municipalities only contract with New York-based vendors—they are free to continue to procure

⁵¹⁵ See *id.* at 810–14; see also *Reeves, Inc. v. Stake*, 447 U.S. 429 (1980) (sustaining a restriction on the sale of government-produced cement to South Dakota residents); and *White v. Massachusetts Council of Const. Employers, Inc.*, 460 U.S. 204 (1983) (upholding an executive order in Boston requiring that city residents comprise at least one-half the staff of all public works construction projects funded in whole or part by city funds or city-administered federal funds).

⁵¹⁶ See *Asante v. C.A. Dep’t. of Health Care Serv.*, 886 F.3d 795, 796, 800–01 (9th Cir. 2018).

⁵¹⁷ See *id.* at 801–02.

⁵¹⁸ See *id.*

⁵¹⁹ See *Id.* at 802 (citing *Big Country Foods v. Bd. of Ed. of the Anchorage Sch. Dist.*, 952 F.2d 1173, 1175–79).

⁵²⁰ See *id.*

their food from in-state and out-of-state without taking advantage of the bill's preference options. In this way, it is unlike the timber processing mandate that was struck down in *Wunnicke*, or the employment mandate similarly struck down in *W.C.M.*⁵²¹ Rather, under the current NY bill, the "state"—via municipalities and political subdivisions—is entering and "participating in the market and [then] exercising the right to favor its own citizens over others," not regulating or mandating the behavior of entities in the market.⁵²²

Finally, what if the Good Food NY Bill was further amended to allow vendors based out of New York State to avail themselves of the procurement preferences? Would the bill then be imposing some type of regulation on out-of-state vendors by requiring them to meet certain New York-imposed growing or production practices? The answer is still likely no—especially after the recent 2023 U.S. Supreme Court ruling in *National Pork Producers Council v. Ross*, making this question moot.⁵²³ In that case, the Supreme Court upheld a California law that forbid the in-state sale of pork that came from pigs "confined in a cruel manner."⁵²⁴ The law was challenged in large part because California had very few in-state producers of pork, so the demand of the law would almost entirely burden out-of-state producers by requiring them to modify their business practices and increase costs.⁵²⁵

In upholding the California law, the Court rejected an argument that called for an "extraterritoriality doctrine" that essentially would create an "almost per se" rule forbidding enforcement of any state laws that have the "practical effect of controlling commerce outside the state."⁵²⁶ The Court found that, due to the "interconnected national marketplace," nearly every state law has the practical effect of controlling some behavior beyond its territorial bounds, and that adhering to this rule as proposed by the petitioners would essentially

⁵²¹ See *See S.-Cent. Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82, 95 (1984); see also *Smith Setzer & Sons, Inc. v. S.C. Procurement Rev. Panel*, 20 F.3d 1311, 1318-19 (4th Cir. 1994) (citing *W.C.M. Window Co. v. Bernardi*, 730 F.2d 486, 489 (7th Cir. 1984).

⁵²² See *Hughes v. Alexandria Scrap Corp.*, 426 U.S. 794, 810 (1976).

⁵²³ See *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023).

⁵²⁴ See *Nat'l Pork*, 598 U.S. at 365-66.

⁵²⁵ See *id.* at 367.

⁵²⁶ *Id.* at 371.

cast doubt, or even overturn, hundreds of valid exercises of states' constitutionally reserved powers.⁵²⁷

A similar rationale could be used to resolve any question about the constitutionality of a new version of the Good Food NY Bill that permitted non-New York-based entities to seek the procurement preferences. As the Court noted in *National Pork*, nearly every state law, from income tax to environmental laws, has some practical impact on the behavior of entities located outside of the enacting state.⁵²⁸ Therefore, the fact that any revised New York bill might have some extraterritorial impact would likely not be a reason for striking it down under the D.C.C.

B. Compliance with Federal Procurement Rules

A second major legal concern raised during the campaign to advance the Good Food NY Bill was how its provisions interact, and possibly conflict, with federal procurement laws. In general, when states and their political subdivisions receive federal funds, they are subject to baseline, uniform federal procurement regulations.⁵²⁹ These regulations are different than those rules (often referred to as "FAR") governing the direct acquisition of goods and services by the federal government—which were discussed above in Part IV.B.

Importantly, the rules that apply to federal grant recipients are *in addition* to applicable state and local purchasing rules. But state and local laws cannot override mandatory, uniform federal procurement requirement, as well as additional agency specific (e.g., U.S.D.A. nutritional guidelines) procurement requirements.⁵³⁰

⁵²⁷ *Id.* at 374-75.

⁵²⁸ *See id.* at 374-75.

⁵²⁹ 2 C.F.R. §§ 200.317–§ 200.327 (2026); *see also* ADAM G. LEVIN, CONG. RSCH. SERV., IF13125, PROCUREMENT GUIDANCE FOR FEDERAL GRANTS 1 (2025) (discussing procurement requirements for federal grant awards, including highlighting differences in standards between "states and Indian tribes" and other recipients of federal dollars).

⁵³⁰ 2 C.F.R. § 200.317, § 200.318(a); *see also* U.S. DEP'T OF HOUS. & URB. DEV., *Which rules or requirements must be followed when there is a conflict between local or state law and federal procurement rules?*, HUD EXCHANGE (2012), <https://www.hudexchange.info/faqs/992/which-rules-or-requirements-must-be->

Stated differently, federal uniform and agency-specific grant procurement rules are the minimum standards for recipients.⁵³¹ And those recipients must still comply with applicable state and local laws, unless federal law explicitly preempts those state and local laws.⁵³²

Among many (often complex) requirements, I focus here on several federal provisions most relevant to local public food procurements.

1. Full and Open Competition

One important provision of the uniform federal procurement standards is the “full and open competition” requirement.⁵³³ This provision, which applies to recipients and subrecipients of federal funds, requires that “[a]ll procurement transactions under the Federal award must be conducted in a manner that provides full and open competition.”⁵³⁴ Federal regulations specify some examples where contractors would violate this mandate—such as “[p]lacing unreasonable requirements on firms for them to qualify to do business,” “[r]equiring unnecessary experience” or “[s]pecifying only a certain ‘brand name’” instead of also permitting an equal or similar product to be offered.⁵³⁵

Another important way the federal rules address competition in local procurement is through the methods of procurement. Under federal regulations, there are three main types of procurement methods that non-federal entities receiving federal monies can utilize.⁵³⁶ The first method is “informal” and includes “micro-purchases” and

followed-when-there-is-a-conflict/ [<https://perma.cc/9TA8-NSWT>] (“When there is a conflict between federal and state and local rules or requirements for procurement, the most restrictive would apply. For example, the federal dollar threshold for small purchase procurement for goods and services is \$100,000 but if state or local rules or requirements establish a lower threshold, then the lower dollar limit would apply.”).

⁵³¹ See generally 2 C.F.R. § 200.218-327.

⁵³² See U.S. DEP’T OF HOUS. & URB. DEV., *supra* note 530.

⁵³³ 2 C.F.R. § 200.319(a).

⁵³⁴ *Id.*; 2 C.F.R. § 200.317.

⁵³⁵ 2 C.F.R. § 200.319(c).

⁵³⁶ 2 C.F.R. § 200.320.

“simplified acquisitions.”⁵³⁷ According to federal rules, “[t]hese procurement methods expedite the completion of transactions, minimize administrative burdens, and reduce costs” and can be utilized when the value of the procurement does not exceed a specific formula of cost known as the “simplified acquisition threshold” (currently \$350,000 for most transactions).⁵³⁸

Micro-purchases, the first type of informal method, “may be awarded without soliciting competitive price or rate quotations if the recipient or subrecipient considers the price reasonable based on research, experience, purchase history, or other information; and maintains documents to support its conclusion.”⁵³⁹ And in most cases, these micro purchases are allowed when the total amount of the award using federal monies does not exceed a set federal threshold (currently \$15,000 for most transactions).⁵⁴⁰ And simplified acquisitions, the second type of informal method, may be made when the aggregate amount of the transaction is greater than the micro-purchase threshold but below the simplified acquisition threshold.⁵⁴¹ Federal rules states that under this method “price or rate quotations must be obtained from an adequate number of qualified sources” and “[u]nless otherwise specified by the Federal agency, the recipient or subrecipient may exercise judgment in determining what number of sources is adequate.”⁵⁴²

The second main procurement method for federal grant recipients is “formal” and includes both “sealed bids” and “proposals.”⁵⁴³ This option applies when a federal award exceeds the “simplified acquisition threshold” and requires a “competitive” procurement method as well as public notice.⁵⁴⁴ Federal rules states that “sealed bids” require solicitation “through an invitation and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible

⁵³⁷ 2 C.F.R. § 200.320(a).

⁵³⁸ *Id.*; LEVIN, *supra* note 529, at 1–2.

⁵³⁹ 2 C.F.R. § 200.320(a)(1)(ii).

⁵⁴⁰ 2 C.F.R. § 200.320(a)(1)(i); LEVIN, *supra* note 529, at 2.

⁵⁴¹ 2 C.F.R. § 200.320(a)(2)(i).

⁵⁴² *Id.*

⁵⁴³ 2 C.F.R. § 200.320(b).

⁵⁴⁴ *Id.*

bidder whose bid conforms with all the material terms and conditions of the invitation and is the lowest in price.”⁵⁴⁵ In contrast, proposals are used when sealed bids are “not appropriate” and can “result in either a fixed-price or cost-reimbursement contract.”⁵⁴⁶ Federal rules specify that the recipient of federal monies puts out a “request for proposals” or RFP, and the final awards, among other things, must be “awarded to the responsible offeror whose proposal is most advantageous to the recipient or subrecipient considering price and other factors.”⁵⁴⁷ Although the words “best value” do not appear in this section of the federal rules, this provision is describing essentially the same concept. And this “proposal” or “RFP” approach is similar to the “best value” method of procurement that applies to the direct acquisition of goods and services by the federal government, and again, described above.

And finally, the third primary method for recipients of federal monies is called “noncompetitive procurement.”⁵⁴⁸ This approach applies only where certain conditions are met, such as when the transaction “does not exceed the micro-purchase threshold,” the contract can only be fulfilled by one source, or there is a public emergency.⁵⁴⁹

2. Buy American Rule

As pointed out earlier, in addition to the baseline rules, individual federal agencies also have their own regulations governing procurement. And as discussed above in Part III.C., under the 1998 William F. Goodling Child Nutrition Reauthorization Act and U.S.D.A. implementing regulations, school food authorities, “to the great extent practicable,” have been required to purchase domestic products to provide to students in federally funded school lunches.⁵⁵⁰

In 2024, the U.S.D.A. issued new rules that clarified and further limited the narrow exceptions to the Buy American

⁵⁴⁵ 2 C.F.R. § 200.320(b)(1).

⁵⁴⁶ 2 C.F.R. § 200.320(b)(2).

⁵⁴⁷ 2 C.F.R. § 200.320(b)(2)(iii).

⁵⁴⁸ 2 C.F.R. § 200.320(c).

⁵⁴⁹ *Id.*

⁵⁵⁰ 42 U.S.C. § 1760(n)(2)(A).

requirement. The new rules explicitly stated that school food authorities are permitted to purchase non-domestic products only when: (a) the product is listed on a federal list of “nonavailable” items and/or is not produced “in sufficient and reasonably available quantities of a satisfactory quality,” or (b) if competitive bids reveal that the cost of a U.S. version of the product is sufficiently higher than the non-U.S. product.⁵⁵¹ The new rules also put in place updated thresholds for School Food Authorities that use these exceptions to purchase non-domestic foods; for example, in the 2025–2026 school year, school authorities can only spend up to 10% of total annual commercial food costs per school year on non-domestic food).⁵⁵² And the new final rule formally requires School Food Authorities to include the Buy American provisions in documentation used for procurement.⁵⁵³ Finally, the new rule changed the definition of domestic products. Previously, federal rules defined a domestic product merely as a food product that is processed in the U.S. “substantially” using commodities that are produced in the U.S.⁵⁵⁴ The new rules now formally define “substantially” to mean a food product that consists at least 51% of agricultural commodities grown domestically.⁵⁵⁵

⁵⁵¹ See Child Nutrition Programs: Meal Patterns Consistent With the 2020–2025 Dietary Guidelines for Americans, 89 Fed Reg 31962, 32027; 7 CFR 210.21(d)(5) and 7 CFR 220.16(d)(5); see also U.S.D.A. FNS, SP 23-2024, BUY AMERICAN PROVISIONS RELATED TO THE FINAL RULE TITLED, CHILD NUTRITION PROGRAMS: MEAL PATTERNS CONSISTENT WITH THE 2020-2025 DIETARY GUIDELINES FOR AMERICANS at 3 (2024) (<https://www.fns.usda.gov/cn/buy-american-provisions> [<https://perma.cc/3CCT-NE2M>] (discussing “Limited Exceptions to the Buy American Requirement”).

⁵⁵² See 89 Fed Reg, 31962, 32028; 7 CFR 210.21(d)(5); 7 CFR 220.16(d)(5); see also U.S.D.A. FNS, SP 23-2024, *supra* note 551, at 4 (discussing “Cap on Non-Domestic Food Purchases”).

⁵⁵³ See 89 Fed. Reg 31962, 32074 at 68; 7 CFR 210.21(d)(3); 7 CFR 220.16(d)(3).

⁵⁵⁴ 89 Fed Reg, 31962, 32030.

⁵⁵⁵ See 89 Fed Reg, 31962, 32039; 7 CFR 210.21(d)(1)(ii); 7 CFR 220.16(d)(1)(ii); see also U.S.D.A. FNS, SP 23-2024, *supra* note 551, at 6 (“USDA codified the definition of substantially that was previously provided in guidance. The definition is as follows: ‘Substantially using agriculture commodities that are produced in the United States’ means over 51 percent of a food product must consist of agricultural commodities that were grown domestically.”).

3. Geographic Preference Rule

Another important federal change in 2024, mentioned above in Part II.C, concerns the U.S.D.A. revised “geographic preference” rule governing institutions receiving Child Nutrition Programs (“CNP”) monies, including the National School Lunch and Breakfast Programs.⁵⁵⁶ Previously, the U.S.D.A. allowed school food authorities to apply a “geographic preference when procuring unprocessed locally grown or locally raised agricultural products.”⁵⁵⁷ This rule, U.S.D.A. explained, allowed school officials to assign additional points or credit to products that were locally grown when soliciting bids for supply contracts, as opposed to food products grown or produced out of state.⁵⁵⁸ However, U.S.D.A. did not permit School Food Authorities to use the rule to restrict responses to vendors within a specified area.⁵⁵⁹

The reformed geographic 2024 rules emerged from “comprehensive review” of the Dietary Guidelines for Americans, stakeholder feedback, lessons learned from previous rules and updates to many components of CNPs, including the expansion of the geographic preference option.⁵⁶⁰ Citing “challenges related to buying local products,” and wanting CNPs to serve as a market for local producers across the country, a new U.S.D.A. rule effective July 1, 2024, allows CNP operators to use “locally grown,” “locally raised,” or “locally caught” as a mandatory procurement

⁵⁵⁶ Child Nutrition Programs: Meal Patterns Consistent with the 2020–2025 Dietary Guidelines for Americans, at 71, 89 Fed Reg 31962 (April 25, 2024); codified at 7 C.F.R. §§ 210, 215, 220, 225, & 22.

⁵⁵⁷ See Geographic Preference Option, *supra* note 132, at 22607–08.

⁵⁵⁸ See *id.* at 22603; see also generally CHRISTINA CONNELL ET AL., PROCURING LOCAL FOODS FOR CHILD NUTRITION PROGRAMS, U.S.D.A. FNS, at 34 (2022) <https://fns-prod.azureedge.us/sites/default/files/resource-files/June22F2SProcurementGuide508.pdf#page=4> [<https://perma.cc/7S9Y-JDAA>] (guidance document to assist CNP recipients in buying local food under previous federal geographic rule).

⁵⁵⁹ CONNELL ET AL., *supra* note 558, at 56.

⁵⁶⁰ 89 Fed Reg 31962. For a summary of the 2024 rule changes see KARA CLIFFORD BILLINGS, CONG. RSCH. SERV., R47522, USDA’S LATEST UPDATE TO NUTRITION STANDARDS FOR SCHOOLS MEALS (2024).

specification “for unprocessed or minimally processed food items” in federally-funded programs.⁵⁶¹

Similar to the 2011 U.S.D.A. rules, the new regulations do not provide a formal definition of the word “local” and instead permits CNP operators to make this determination—as long as it “upholds full and open competition.”⁵⁶² Further, the U.S.D.A. explains that a specification is defined as a “written description of the product or service that a vendor must meet to be considered responsive to a solicitation.”⁵⁶³ For example, in defining local, U.S.D.A. explains that School Food Authorities should be careful not to use a definition that is too narrow, such as “within five miles,” if only one farm meets that definition, as that is likely an unreasonable limit on competition.⁵⁶⁴ Additionally, the U.S.D.A. makes clear that despite the rule change, School Food Authorities may instead choose to continue to use “local” as they have since 2011 by adding additional points to bids from local producers but not requiring bidders to be local.⁵⁶⁵ Thus, with the 2024 U.S.D.A. rule change, CNP-funded institutions may seek to buy local food with federal funding via a mandatory specification, or by adding points or otherwise providing in their procurement process.⁵⁶⁶

⁵⁶¹ 7 CFR § 210.21(g)(1), § 215.14a, § 216(f)(1), § 217(e)(1), § 226.22(c)(1); *see also* 89 FR 31962, 31963, 32033. Similar to the 2011 U.S.D.A. rules, the new regulations do not provide a formal definition of the word “local” and instead permits the CNP operators to make this determination—as long as it “upholds full and open competition.” U.S.D.A. FNS, SP 24-2024, CACFP 10-2024, SFSP 14-2024, GEOGRAPHIC PREFERENCE OPTION QUESTIONS & ANSWERS 7 (2024) (<https://fns-prod.azureedge.us/sites/default/files/resource-files/cn-f2s-geographic-preference-qas-072624.pdf>). Further, the USDA explains that a specification is defined as “a written description of the product or service that the vendor must meet to be considered responsive and responsible.” 89 Fed. Reg. at 32033.

⁵⁶² *See* U.S.D.A., GEOGRAPHIC PREFERENCE OPTION QUESTIONS & ANSWERS 7 (2024).

⁵⁶³ *See id.* at 3.

⁵⁶⁴ *See id.* at 10.

⁵⁶⁵ *See id.* at 4–5; U.S.D.A. FNS, SP 24-2024, *supra* note 551, at 3.

⁵⁶⁶ U.S. DEP’T OF AGRIC. FOOD & NUTRITION SERVICE, USING FEDERAL FUNDS TO PURCHASE LOCAL FOODS, SP 11-2025, CACFP 09-2025, SFSP 05-2025, at 2 (May 6, 2025), <https://www.fns.usda.gov/schoolmeals/federal-funds-purchase-local> [<https://perma.cc/DP4K-MHVR>].

In New York, this rule change on first blush seems to provide more legal latitude to schools to boost the purchasing of local food. Among other things, this could greatly assist school districts to take advantage of the state's "30% Initiative, which provides a 25 cent per meal subsidy if they spend at least 30% of total school lunch costs purchasing from New York State vendors.⁵⁶⁷ But similar to other federal procurement requirements, this rule only allows schools receiving federal funding to utilize these purchasing options to the extent they are permitted by "applicable State and local laws and regulations" governing school procurement. And in New York, as indicated, there is currently no price or other preference for local (or any other kind) food procurement. Further, while there are some food purchasing exceptions set forth in GML § 103 that could be used for mandating local purchasing, as discussed above, these four provisions are narrow and only apply to certain types of products.

Further recipients would still need to comply with overall federal procurement rules, including "open competition." For example, the U.S.D.A. states in its 2025 guidance that "before determining the appropriate procurement method or writing solicitations, CNP operators should conduct market research to determine the ability of local producers and other local food vendors to provide desired products, price points, quantities, distribution, and other requirements unique to the food service operation and whether an adequate supply of local foods exists in the marketplace."⁵⁶⁸ Thus, it is possible, but not guaranteed, that a New York school district or other institutions receiving CNP monies could use "local" as mandatory specification under GML § 103.

Alternatively, as discussed, uniform federal procurement rules state that "proposals" are the method to use when "contracts must be awarded to the responsible offeror whose proposal is most advantageous to the recipient or subrecipient considering price and other factors."⁵⁶⁹ Under U.S.D.A. guidance, this is the case when the award is ultimately made to the responsive and responsible vendor who is able to provide the "best overall value," considering price and the other criteria outlined in the request.⁵⁷⁰ As things now stand,

⁵⁶⁷ See *supra* notes 148-150.

⁵⁶⁸ USING FEDERAL FUNDS TO PURCHASE LOCAL FOODS, *supra* note 566, at 2.

⁵⁶⁹ 2 CFR 200.320(b)(2)(iii).

⁵⁷⁰ CONNELL ET AL., *supra* note 558, at 47.

however, this best value purchasing approach is not explicitly allowed for favoring local food under GML § 103 and SFL § 163.

Thus, to fully take advantage of the revised U.S.D.A. rule, New York should amend GML § 103, along the lines as set forth in the Good Food NY Bill, to explicitly grant schools and municipalities the ability to apply some type of preference for the purchasing of local food.

C. Request for Proposals (“RFPs”) v. Bids

A third legal issue that has come up in New York relates to the use of Request for Proposals (“RFPs”) in local procurement processes. As already stated, RFPs are generally a more complex and flexible solicitation process.⁵⁷¹ And the RFP process is commonly used around the country for best value procurements.⁵⁷² Especially with the addition of the best value purchasing option in GML § 103(1) in 2012, questions have been raised about that provision of state law that allows the use of the flexible RFP or similar processes—in contrast to the sealed bidding process traditionally required for lowest responsible procurement. There also has been confusion in recent years on whether, or how, RFPs could be used for best value food procurements in New York where recipients are receiving federal CNP monies.

As a starting point, as discussed in official § 103 guidance issued by the N.Y.S. Comptroller’s Office, there are examples where state law “expressly authorize the use of an RFP as an alternative to competitive bidding.”⁵⁷³ One example of such express authority

⁵⁷¹ See Part III.B. *supra*.

⁵⁷² See, e.g., *Maryland Procurement Manual: 6. Review and Evaluation Process*, § 6.4, MARYLAND (Oct. 1, 2025), <https://procurement.maryland.gov/mpm-6-review-and-evaluation-process/#6.9> [<https://perma.cc/HNK8-F3NZ>]; MISS. CODE ANN. § 31-7-13(d)(ii) (2024); GEN. SRVS. DEP’T STATE PURCHASING DIV. STATE OF N.M., BEST VALUE PROCUREMENT GUIDE: PART 1—DEVELOPING REQUEST FOR RFPs (2016), <https://www.generalservices.state.nm.us/wp-content/uploads/2021/02/Best-Value-Procurement-Guide-Part-1-January-2016.pdf> [<https://perma.cc/S2SC-GQHZ>].

⁵⁷³ COMPETITIVE BIDDING UNDER GENERAL MUNICIPAL LAW § 103, *supra* note 212 at 29. Somewhat confusingly, this 2020 Comptroller’s guidance document also states, citing a 1994 New York State appellate court case, that utilizing “the ‘RFP process does not constitute compliance with General Municipal Law § 103,

contained in a Comptroller's 2020 guidance document is a provision of the state's energy law that allows state agencies, municipalities or public authorities to "procure an energy performance contractor by issuing and advertising a written request for proposals in accordance with" relevant procurement policies and procedures.⁵⁷⁴ More generally, NYS Finance Law explicitly allowing state agencies to utilize RFPs for certain solicitations and "pursuant to guidelines issued by the state procurement council."⁵⁷⁵

In contrast, the Legislature did not include any express authorization for the use of RFPs when § 103(1) was amended in 2012 to add the best value language.⁵⁷⁶ At the same time, however, when the 2012 best value language was added to GML § 103(1), the term "offer" and "offeror" was explicitly added every time the word "bid"

which requires a sealed competitive bidding process." *Id.* It appears that this statement is simply emphasizing that RFPs are only permitted where state law does not require localities to follow competitive bidding requirements—such as with the new best value purchasing option of § 103. This reading is consistent with more recent New York State guidance indicating that there is direct authority to use RFPs under § 103 based on inclusion of the "best value" value language in that section of the GML. NYGOVBUY, A GUIDE TO RFPs FOR PROCUREMENT PROFESSIONALS 6 (2022), <https://ogs.ny.gov/system/files/documents/2022/05/2022-22-a-guide-to-rfps-for-procurement-professionals.pdf>.

⁵⁷⁴ N.Y. Energy L. § 9-103(6).

⁵⁷⁵ SFL § 163(7).

⁵⁷⁶ It appears that there are only been a handful of cases discussing this RFP issue since § 103 was amended to permit best value procurement in 2012. In a 2021 case, *Matter of Auctions Int'l v. County of Orange*, the NYS Second Department Appellate Division determined that Orange County's use of a RFP connection with certain tax sale auctions was properly carried out, presumably, under GML § 104(b) because the contract required special expertise and thus was "not subject to the competitive bidding requirements under General Municipal Law § 103...". *Matter of Auctions Int'l v. County of Orange*, 148 N.Y.S.3d 693, 694 (N.Y. App. Div. Second Dept. 2020) (citing *Matter of Omni Recycling of Westbury, Inc. v. Town of Oyster Bay*, 11 N.Y.3d 868, 869, 873 N.Y.S.2d 248, 901 N.E.2d 741); *see also* *City of Kingston v. Aslan Env't Servs., LLC*, 117 N.Y.S.3d 711 (N.Y. App. Div. 2020). In this case, the Third Department Appellate Division, while addressing specific breach of contract claims, recognized the proper use of an RFP related to a sewage sludge drying and pelletization contract at the City of Kingston's wastewater treatment plant under General Municipal Law § 120-w, a provision that explicitly allows the use of the RFP process as an alternative to the competitive bidding requirements in GML § 101 and 103. *Id.* at 713.

or “bidder” was used.⁵⁷⁷ Thus, throughout § 103(1) it now states, “bids or offers” and “bidder or offerer.” NYS SFL § 163(1)(j), which again sets for the definition of “best value” for state agencies and is cross-referenced in GML § 103, directly connects the term “offeror” with “best value”—and does not use the word “bid” or “bidder.”⁵⁷⁸

Further, New York State Procurement Guidelines, which as mentioned above apply to state agencies, also indicate that the RFP process should be used for best value service contracts under § 163(4)(d).⁵⁷⁹ Further, under the uniform federal procurement rules discussed above, the term bidder is used only in reference to the sealed bid process, while “offerer” is used exclusively in reference to the RFP process.⁵⁸⁰ Federal rules further suggest that when the federal government is exercising the best value purchasing option, agencies would be utilizing an RFP-type process—not a sealed bidding method—to consider non-price criteria and evaluation factors.⁵⁸¹

⁵⁷⁷ The addition of this language, and the new best value provision, was executed through two separate bills that became law on January 27, 2012. *See* S4753-A/A7357, 2011 N.Y. Laws, Ch. 608 and S6117/A8692, 2012 N.Y. Laws, Ch. 2.

⁵⁷⁸ Best value is defined as “the basis for awarding contracts for services to the offerer which optimizes quality, cost and efficiency, among responsive and responsive offerers.” NYS SFL § 163(1)(j); *see also*, Rachel Klein, *The Good Food Bill: The Impact of Federal and State Procurement Law on Implementing Sustainable Agricultural Standards in New York*, NYU LAW MOOT COURT BOARD: PROCEEDINGS (Feb. 20, 2025), <https://proceedings.nyumootcourt.org/2025/02/the-good-food-bill-the-impact-of-federal-and-state-procurement-law-on-implementing-sustainable-agricultural-standards-in-new-york/> [https://perma.cc/9XZ6-M3YD] (noting that “the addition of ‘offerer’ to GML § 103 is clearly meant to indicate a separate meaning from the term ‘bidder.’”).

⁵⁷⁹ *See* PROCUREMENT GUIDELINES *supra* note 69, at 22–24, 33.

⁵⁸⁰ 2 CFR § 200.320(b)(1) (sealed bids) and 2 CFR § 200.320(b)(2) (proposals).

⁵⁸¹ *See* 48 C.F.R. § 15.101; *see* RENÉE JOHNSON ET AL., CONG. RSCH. SERV., RL 48141, TRENDS IN USDA PROCUREMENT OF U.S. FOOD AND AGRICULTURAL PRODUCTS 24 (2024). Note the case of *Prof'l Bldg. Maint. Corp. v. Sch. Bd. of the Cnty. of Spotsylvania*, 283 Va. 747 (2012), where the Virginia Supreme Court held that even though Virginia Public Procurement Act allowed public bodies to consider “best value concepts when procuring goods and nonprofessional services,” it did not provide a method of procurement other than competitive sealed

Additionally, following the 2012 GML § 103(1) change to allow municipalities the option of utilizing best value purchasing, New York City revised its procurement rules to explicitly permit the use of RFPs for best value purchasing. As previously stated, New York City procurement regulations specify two separate methods of procurement: (a) competitive sealed bidding and (b) competitive sealed proposals.⁵⁸² After the 2012 amendments, the city revised both of these methods to incorporate language to explicitly reflect the use of best value procurement.⁵⁸³ Specifically, with respect to the “competitive sealed proposals” set of sub-rules, the city added language in 2013 to explicitly indicate that contracts will be awarded to the vendor whose proposal “represents the best value to the City by optimizing quality, cost and efficiency,” and therefore is considered most advantageous to the City per price and other criteria contained in the RFP.⁵⁸⁴ Reflecting the state’s best value definition in State Finance Law, city rules were also modified to indicate a “quantitative preference” of up to 10% in price or points for women and minority-owned businesses” shall be given when using best value RFPs.⁵⁸⁵ And as noted above, as a general rule the New

bidding. *Id.* at 753, citing V.C.A § 2.2–4300. Thus, it ruled against a county school board that sought to utilize a “Best Value Invitation For Bid” for procuring custodial service to consider factors in addition to price “to select the most advantageous offer.” *Id.* at 750, 755.

⁵⁸² 9 RCNY PPBR § 3-01.

⁵⁸³ NYC Procurement Policy Board, Notice of Adoption of Final Rule (April 8, 2013) (governing competitive sealed bids), https://www.nyc.gov/assets/mocs/downloads/Regulations/PPB/PPB_Amendments_Best_Value_Competitive_Sealed_Bidding.pdf; NYC Procurement Policy Board, Notice of Adoption of Final Rule (April 8, 2013), <https://www.nyc.gov/assets/mocs/downloads/Regulations/PPB/BestValueCSP.pdf> (governing competitive sealed proposals).

⁵⁸⁴ *Notice of Adoption of Final Rule (competitive sealed proposals)*, *supra* note 583; 9 RCNY PPBR § 3-03(a)(1). With respect to the “competitive sealed bidding” set of sub-rules, the city added, among other changes, that “for the purchase of goods and standards services, a statement that award shall be made to the lowest responsive and responsible bidder or to the bidder whose bid represents the best value to the City by optimizing quality, cost and efficiency.” *Notice of Adoption of Final Rule*, § 3-02 (b)(iv)(B) (Apr. 8, 2013) (emphasis added).

⁵⁸⁵ 9 RCNY PPBR § 3-03(a)(1). As mentioned in note 387 *supra*, city rules for such RFPs-Best Value solicitations for good and standard services, minority or women-owned businesses must generally receive a 10% preference of the “total technical points earned in the evaluation of the proposal,” or a in certain

York City Mayor's office requires agencies to employ "Best Value RFPs" when relying on the competitive sealed proposal method.⁵⁸⁶

Lawyers working for the City of New York also view the 2012 changes to § 103 as opening the door to the use of RFPs as an alternative for bidding documents when pursuing a best value procurement. In one public presentation in 2013, they wrote that "[o]ne consequence of the [2012] best value amendment to GML § 103 is that goods and standard services may now be procured by proposals (i.e., either through an RFP or a negotiated acquisition) rather than low sealed bid, provided that the requirements of GML § 103 are met."⁵⁸⁷

Finally, as mentioned above, uniform federal rules for recipients explicitly allow the use of RFPs for recipients of federal awards under the "formal" method of procurement.⁵⁸⁸ Still, once again, these federal rules are considered a floor and thus grant recipients must still conform with applicable federal and state laws.

D. Federal and State Agricultural and Food Standards

Finally, one other legal issue that has been raised about the Good Food NY Bill concerns whether its defined values-based standards somehow run afoul of federal and state regulations

circumstance, a 10% price preference. 9 RCNY PPBR § 3-03 (g)(6). For construction-related services, the "technical merit" ranking of potential vendors must provide, again with some exceptions, "a point preference of five percent (5%) of the total technical points" given to all proposers that are minority or women-owned businesses. 9 RCNY PPBR § 3-03(g). For best value bids, city rules state that generally a price preference of 10% will be give to minority or women owned businesses. 9 RCNY PPBR § 3-03(o)(iv).

⁵⁸⁶ Memorandum from Kim L. Yu, Director and City Chief Procurement Officer, Mayor's Office of Contract Services to Mayoral Agency Chief Contracting Officers, Utilization of Best Value Competitive Sealed Bids and Best Value Competitive Sealed Proposals at 1 (Aug. 1, 2025).

⁵⁸⁷ Steven Stein Cushman & Howard Friedman, *Session 1: Overview of the Law and Rules Governing NYC Procurements: What's New for Vendors in 2013?*, in *NEW YORK CITY PROCUREMENT LAW: DOING BUSINESS WITH NEW YORK* 20 (Nov. 6, 2013); see also Jeffrey D. Friedlander, *City Procurement: Change and Continuity*, *NEW YORK L. J.* (December 16, 2013) (noting that new city rules allowed city agencies to "procure goods or standardized services pursuant to the best value approach either by 'best value bids' or by 'best value proposals.'").

⁵⁸⁸ 2 C.F.R. § 200.320(b)(2).

governing agricultural production. Specifically, the New York Farm Bureau asserted in its 2024 opposition that the bill establishes preferences “that don’t reflect ‘regulated production methods’” and that any “standards should reflect current state and federal regulations.”⁵⁸⁹

With respect to procurement regulations, as discussed above, federal law is applicable where federal monies are used by the recipient, and only establish baseline minimum requirements that must be followed in the procurement process.⁵⁹⁰ States can impose additional procurement requirements as long as they do not conflict with federal law.⁵⁹¹ The values-based standards in the Good Food NY Bill are not requiring production, purchasing, or other directives for private businesses; rather, they are being employed as options in connection with local government procurement in the state. In short, it appears that the Farm Bureau simply opposes a values-based food procurement scheme in the Good Food NY Bill as a policy preference.⁵⁹²

CONCLUSION

The concept of leveraging public procurement to advance social, economic, and environmental goals has a long history both in this county and around the world. In the last 15 years, we have witnessed both a growing recognition of the myriad adverse impacts of our food and agricultural practices as well as the potential of public food procurement as a key strategy to tackle many of these issues.

The good news is that significant progress has been made in advancing values-based public food procurement initiatives, primarily at the local level—and again both here in the U.S. and abroad. As discussed, a number of U.S. cities have now launched “good food” purchasing programs, and some cities like New York

⁵⁸⁹ New York Farm Bureau, Memorandum of Opposition, May 27, 2025 at 1-2; New York Farm Bureau, 2024 Opposition Memo (1/8/24) at 1.

⁵⁹⁰ See *supra* Part V.B.

⁵⁹¹ See *supra* note 230.

⁵⁹² See N.Y. FARM BUR., 2024 POLICY BOOK, *supra* note 13, at 7 (“We oppose legislation that permits values-based procurement preference to food products for state and local municipalities. This includes efforts to create ‘standards’ that impact sustainability, racial equity, animal welfare, nutrition and workforce welfare that are not currently required in state/federal law.”).

are even seeking to reduce the climate footprint of their food consumption through changes in procurement policies.

At the same time, efforts to advance local, values-based food policies in many jurisdictions have run up against antiquated state procurement laws that, in general, require cities and towns to buy from the lowest responsible bidder. To be sure, many states have authorized the use of some form of price preferences for in-state grown and produced food. Additionally, non-cost-related standards and technical specifications spelled out in food procurement solicitations—including delivery and logistics requirements, and nutrition and food safety criteria—are another tool local institutions employ when using the traditional lowest bid approach. And some states (including New York) have incorporated the more sophisticated best value purchasing method into their procurement laws.

But even where adopted, both the price preference and best value purchasing options are often limited to state agencies and not available to cities and other political subdivisions. And the definitions of best value (including New York) generally do not encompass, unambiguously at least, the good food purchasing “values” many governmental decision-makers and advocate seek to advance. Instead, best value is most often focused on economic-related factors like efficiency, quality, and reliability of the product or vendor. The biggest exception is where best value (again including New York) is tied to meeting procurement goals for hiring small, woman-owned and minority-owned businesses.

So, what are some critical elements to consider in drafting a values-based food procurement bill? Perhaps most importantly, state law should explicitly authorize the use of “best value” purchasing for localities and ensure that this method of solicitation authorizes the weighing of values-based food standards in the decision-making process. In addition to this option, states should also consider adopting or expanding the use of a price preference or bid preferencing scheme for vendors selling to municipalities that satisfy one or more “good food” purchasing values.

Based on the New York legislative experience, here are several other suggestions to consider in drafting any new state statutory language:

- Craft strong and clear definitions of the specific food values to be given preference—and the Center for Good Food Purchasing standards provide an excellent template or starting point;⁵⁹³
- Include supply chain transparency requirements to ensure vendors are meeting the chosen standards;
- Incorporate language specifying the types of local solicitation processes permitted for best value purchasing—especially to allow RFPs or similar methods;
- Do not limit the applicability of either best value or price preference procurement options to only in-state farms and vendors.
- In drafting new or revised statutes, as discussed, it is also important to:
 - Research court rulings on state and municipal procurement laws, including on applicable “home rule” authority;
 - Ensure consistency with federal procurement law governing state and local entities receiving federal food monies; and
 - Take into consideration potential U.S. Constitutional concerns, especially under the Dormant Commerce Clause.

One other element to keep in mind that surfaced, but was not resolved, in the New York deliberations was whether to incorporate a provision that authorizes a state agency, or agencies, to develop implementing regulations for any new statutory language. Especially given the complexity of the good food standards, state agency regulations and accompanying guidance would likely be helpful to municipalities that might not have the staff or expertise to effectively implement and enforce the purchasing criteria. It is common legislative practice to authorize an agency to promulgate implementing regulations for statutes, and there is strong precedent from other types of state public procurement laws.

Now, as stated throughout this piece, determining the exact contours of existing procurement laws for a specific local jurisdiction is complicated and beyond the scope of this piece. Especially in states with home rule delegations, there is no substitute for officials and advocates to conduct their own in-depth legal research to determine the precise parameters of applicable municipal

⁵⁹³ GOOD FOOD PURCHASING PROGRAM: PURCHASING STANDARDS FOR FOOD SERVICE INSTITUTIONS v3.0, *supra* note 173.

procurement rules.⁵⁹⁴ And in undertaking this research, it is imperative to not overlook relevant federal and state case law as well as shifting national procurement rules that apply to recipients of federal food dollars.

My intent in this piece has been to highlight some leading states and cities—with a spotlight on New York—as a potential roadmap for understanding procurement laws around the country. My hope is that laying out the intricacies of the different bill versions in New York—and the legal and policy lessons learned in the campaign to enact it—will assist state legislative efforts elsewhere on how best to empower local good food procurement. The emergence of values-based food purchasing is a natural evolution in the field of socially infused and sustainable public procurement laws and policies. We must now give localities in New York and beyond the statutory flexibility they need to unlock their full purchasing potential.

⁵⁹⁴ There at least three recent examples of city governments issuing guidance documents that aim to catalogue applicable federal, state and local laws governing at least some form of values-based municipal procurement. *See Buying with Purpose: Seattle's Guide to Food Purchasing*, CITY OF SEATTLE, at 18–33 (2025), <https://www.seattle.gov/documents/departments/ose/foodaccess/buying%20with%20purpose%20-%20seattle's%20guide%20to%20food%20purchasing%20update%2012-23-25.pdf>; *Good Food Purchasing For New York City: Legal Considerations & Key Terms*, CITY FOOD POLICY, (Oct. 15, 2024) https://www.cityfoodpolicy.com/wp-content/uploads/2025/02/GoodFoodPurchasingReport_Final.pdf; *Resource Guide: Procurement Fundamentals*, CITY OF CHICAGO (2023), https://www.chicago.gov/content/dam/city/depts/dps/Outreach/Resource%20Guide_ProcurementFundamentals_Aug2023_FINAL.pdf.

