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GOOD FOOD PURCHASING FOR NEW YORK CITY:

LEGAL CONSIDERATIONS & KEY TERMS



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1.0 INTRODUCTION

Food purchasing and consumption choices play a central role not only in the individual health of people, but also the economic, social, and environmental wellbeing of society. Beyond nutrition's role in public health, food impacts the environment through its production, processing, and transportation, all of which significantly contribute to greenhouse gas emissions, soil, water, and air quality. Additionally, over 10 percent of U.S. employment is in food and agriculture sectors, and labor practices in these industries play important roles in the economic well-being of people and communities that rely on those jobs.

Because food impacts so many aspects of our lives, cities around the world are beginning to leverage their public food procurement dollars to influence food system transformation. Among these cities, New York City (NYC) has a large share of municipal food procurement, spending about \$500 million per year on food and meals for public agencies, including schools, correctional facilities, hospitals, older adult centers, pantries, shelters, and more.

Due to the scale of NYC's food procurement and the potential public value of food systems change, NYC is developing plans for values-based procurement policies that will help the city to leverage its food spending towards a variety of public goals. In 2018, NYC worked with the Center for Good Food Purchasing to conduct a baseline assessment of public procurement and set a path forward for agencies to adopt the GFP framework, while adapting it to the NYC reality. Later, in 2021, NYC MOFP released Food Forward NYC, the city's first ever 10-year food policy plan. The plan includes the goal of using food purchasing to advance values including transparency, local economies, environmental sustainability, valued workforce, animal welfare, and nutrition. Finally, in 2022, through an executive order, NYC institutionalized these efforts, as a way to foster vendor and agency cooperation in improving health and nutrition through public food procurement and the NYC food standards.

Using public spending to advance broader public goals beyond the direct intent of the expenditure is not a new practice. In recent decades, practices such as divestment from fossil fuel companies have grown in popularity as a way to meet the direct needs of the purchasing entity but also the needs of the broader public. Values-based food procurement, however, represents a significant advancement in the use and impact of such procurement mechanisms for advancing social change.

Public food procurement is governed by critical federal, state, and local laws that guide – and sometimes limit – how public dollars can be spent. These policies, guidelines, and regulations are meant to ensure that public dollars are spent responsibly and in ways that limit graft and corruption. Barring any legislative changes, effective values-based food procurement policies must be enacted within the legal framework of existing laws and policies.

Starting in 2023, NYC partnered with researchers at Colorado State University (CSU) and Cornell University on the City Food Policy Project (CFP Project) to empirically model the impacts of potential values-based procurement policies. The project aims to model a select number of values-based procurement policies and their potential, social, environmental, and economic implications for both NYC and New York State.

This report aims to enumerate the legal and political setting of the CFP Project in three sections. First, we summarize the proposed values-based procurement policies that are under consideration by NYC and the process by which these policies were selected. Second, we review key federal, New York State, and New York City laws and policies that influence municipal food procurement. Finally, we review each values-based procurement policy under consideration and specific laws and policies that guide their implementation.

This report is an enumeration of relevant laws and policies and not an analysis of those laws. Moreover, this report does not represent the formal or legal opinion of the City of New York.

2.0 VALUES-BASED FOOD PROCUREMENT & POLICIES

2.1 GUIDING VALUES

Cities have begun to leverage their part of this spending to advance impacts both for their residents and their regions. The values guiding NYC's food procurement policies are as follows.

- **Animal welfare.** NYC aims to use public food dollars to minimize harm to animals raised for food.
- **Environmental sustainability.** NYC aims to use public food dollars to support a healthy and sustainable natural environment.
- **Local economies.** NYC aims to use public food dollars to support New York State businesses, particularly those that are owned by women and minorities.
- **Nutrition.** NYC aims to use its public food dollars on nutritionally dense foods like minimally processed vegetables, fruits, and whole grains.
- **Transparency.** NYC aims to provide transparency in what food it is buying, where this food is coming from, and who provides this food.
- **Valued workforce.** NYC aims to use its public food dollars to support businesses and supply chains that support the wellbeing of the workers and employees.

2.2 POLICY ACTIONS

In support of these values, NYC – in collaboration with research partners at CSU and Cornell – identified six *potential* procurement policies for the research team to investigate. These policy actions were selected that *could be* administratively or legally feasible for NYC, align with existing Mayoral priorities, and have the potential of advancing the values outlined previously. The research team will work to model the social, environmental, and economic implications of adopting these policies, with particular attention to their impacts on the guiding values listed above. These actions are summarized below.

These policy options were selected in order to further explore their potential impacts. However, the feasibility of each potential policy action varies. For example, changing NYC menu requirements to increase fruits and vegetables is the most feasible action, while options such as incentivizing community hiring and investing in food system infrastructure are the least feasible.

- **Price premium or purchasing requirement for USDA-certified Organic foods and food products (“Organic preference”).** Under this policy, NYC would incorporate Organic status into the evaluation of best value bids and solicitations, awarding extra points to certified organic products that fall within 10 percent of the lowest bid.
- **Price premium or purchasing requirement for grown and/or processed in New York State (“local preference”).** Under this policy, NYC agencies would incorporate local status into the evaluation of best value bids, awarding extra points to products from New York State that fall within 10 percent of the lowest bid.
- **Price premium or purchasing requirement for proposals from companies that engage in community hiring (“community hiring preference”).** Under this policy, NYC would evaluate bids or solicitations from small businesses and/or companies employing a substantial percentage of economically disadvantaged candidates as if those bids were 10 percent lower than their submitted bid.
- **Price premium or purchasing requirement for proposals from companies that are certified minority and women-owned business enterprises (“MWBE preference”).** Under this current policy, NYC can evaluate best value bids or solicitations from companies that are certified as a Minority- or Women-Owned Business Enterprise (M/WBE) as if those bids were 10 percent lower than their submitted bid.
- **Public investments in middle food supply chain infrastructure (“Infrastructure investments”).** Under this policy, NYC and/or NY State would provide direct public investments in supply chain infrastructure, such as processing and cold storage

sites in the city or region. Investments could take the form of direct grants, loans, and/or technical assistance.

- Increasing the percentage of plant-based proteins and fruits and vegetables in agency-provided meals and food (“Menu changes”).**
 Under this policy, NYC would require changes to agency menus that would result in increased purchases of fruits, vegetables, and/or plant-based proteins.

The following sections begin by reviewing relevant laws/policies at the Federal, state, and city levels that are either generally applicable across all proposed

policy actions and/or specific to a given policy action. **Table 1** summarizes all laws/policies reviewed in this document and associated policy actions that may be impacted by each.

3.0 GENERAL ENABLING AND CONSTRAINING LEGISLATION

The following highlights federal, state, and city legislation or policies that enable or constrain NYC values-based procurement initiative as a whole, regardless of the specific policy action. These generally applicable laws/policies are enumerated

	Government Source	Organic Preference	Local Preference	Community Hiring Preference	M/WBE Preference	Infrastructure Investments	Menu Changes	For more information, see section...
Code of Federal Regulations §200.318 through §200.327	Federal	x	x	x	x	x	x	3.1
Code of Federal Regulations Title 13 part 121	Federal			x				4.3
Code of Federal Regulations Title 48	Federal	x	x	x	x		x	3.1
Code of Federal Regulations, Title 7 Parts 210 and 220	Federal						x	4.6
The Child and Adult Care Food Program (CACFP)	Federal						x	4.6
United States Code Title 7 §§ 6501–6522	Federal	x						4.1
Executive Order 32 (2023)	State		x					4.2
General Municipal Law §100-A	State	x	x	x	x	x	x	3.2
General Municipal Law §103	State	x	x	x	x		x	3.2 & 4.2
General Municipal Law §104-B	State	x	x	x	x		x	3.2
New York State Grown and Certified Program	State		x					4.2
Senate Bill S6955A	State	x	x	x	x	x	x	3.2
Senate Bill S7387B	State			x				4.3
State Executive Law §28	State			x				4.3
State Finance Law §163	State	x	x	x	x	x	x	3.2
Executive Order 8 (2022)	City	x	x	x	x	x	x	3.3
Local Law 1 (2013)	City				x			4.4
Local Law 50 (2011)	City		x					4.2
M/WBE Price Preference Rule	City				x			4.4
M/WBE Procurement & Contract Method	City				x			4.4
New York City Food Standards	City						x	4.6
New York City Minority and Women-Owned Business Enterprises (M/WBE) Program	City				x			4.4
Procurement Policy Board (PPB) Rules	City	x	x	x	x			3.3

Table 1: Laws/policies reviewed in this document and associated policy actions.

before reviewing laws/policies specific to each proposed values-based procurement policy action.

3.1 FEDERAL LEVEL LEGAL CONSIDERATIONS

- **Code of Federal Regulations (CFR):** When procuring goods and services under a Federal award, a State and any sub-award recipient must follow federal policies and procedures in §200.318 through §200.327, which outline general procurement standards including methods of procurement and guidelines for contracting with small and minority businesses.
- **Federal Acquisition Regulations:** The Federal Acquisition Regulation (FAR), which consists of Parts 1-53 of Title 48 of the CFR covers contractor qualifications, types of contracts, small and minority business programs, and definitions of procurement words and terms. The FAR guidelines apply to all federal procurements and sub-award recipients.

3.2 STATE LEVEL LEGAL CONSIDERATIONS

- **General Municipal Law §100-A:** The policy of the state is “to assure the prudent and economical use of public moneys for the benefit of all the inhabitants of the state and to facilitate the acquisition of facilities and commodities of maximum quality at the lowest possible cost.”
- **General Municipal Law §103:** GML §103 outlines the rules of advertising for bids and offers. Under GML, purchase contracts must be awarded to the lowest responsible bidder OR on the basis of best value, as defined by State Finance Law.
- **General Municipal Law §104-B:** GML §104-B directs the governing board of every political subdivision and any district therein, by resolution, to “adopt internal policies and procedures governing all procurements of goods and services which are not required to be made pursuant to the competitive bidding requirements of GML § 103 or of any other general, special or local law. In cities with a population of one million or more, the procurement policy board shall develop and promulgate such policies and procedures by

rule.” In New York City, therefore, the procurement policy board is charged with creating specific procurement regulations.

- **State Finance Law §163:** State Finance Law §163 defines best value as “the basis for awarding contracts for services to the offeror which optimizes quality, cost and efficiency, among responsive and responsible offerors. Such basis shall reflect, wherever possible, objective and quantifiable analysis. Such basis may also identify a quantitative factor for offerors that are small businesses, certified minority- or women-owned business enterprises as defined in subdivisions one, seven, fifteen and twenty of Executive Law § 310 (Definitions) or service-disabled veteran-owned business enterprises as defined in subdivision one of section forty of the veterans’ services law to be used in evaluation of offers for awarding of contracts for services.”
- **Good Food New York Bill:** Senate Bill S6955A, awaiting governor signature, would allow food contracts to be awarded “to a qualified bidder who fulfills certain values based procurement standards when such bid is not more than 10% higher than the lowest responsible bidder and when the bidder makes publicly available data on where such bidder sources their food items; sets forth the criteria for values based procurement standards to include local economies, environmental sustainability, racial equity, valued workforce, animal welfare, and nutrition.”

3.3 CITY LEVEL LEGAL CONSIDERATIONS

- **Procurement Policy Board (PPB) Rules:** The PPB is authorized by GML 104-B to promote and put into effect rules governing the procurement of goods, services, and construction by the City of New York. According to the NYC Mayor’s Office of Contracting Services, the “underlying purposes of these Rules are to simplify, clarify and modernize the law governing procurement by the City of New York.” The PPB rules are 200 pages and include many of the legal considerations for the individual policy actions.

- **Executive Order 8 of 2022:** EO8 of 2022 directs the Mayor’s Office of Food Policy to “establish a Good Food Purchasing Program, the goal of which shall include the study and publication of data, on an annual basis, 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.”

4.0 KEY LAWS & DEFINITIONS FOR INDIVIDUAL POLICY ACTIONS

The following section summarizes relevant laws/policies specific to each proposed policy action, excluding those already summarized in the previous section. Where relevant, the following sections identify and define key terms relevant to the policy action. These definitions are noted as sub-bullets under the policy/law wherein they are defined/described. Relevant laws/policies under each policy action are organized starting from the Federal level and concluding with local.

4.1 CERTIFIED ORGANIC INCENTIVES

- **Organic Foods Production Act (OFPA), 7 U.S.C. §§ 6501–6522:** The OFPA “authorized the U.S. Secretary of Agriculture to establish regulations, administered by the Agricultural Marketing Service (AMS) within the U.S. Department of Agriculture (USDA), for certifying products as organic under the National Organic Program (NOP).”
 - » **Organic:** “Organic” products are those certified as such under the U.S. Department of Agriculture’s National Organics Program. See certification requirements at: [USDA Organic | USDA](#)

4.2 NEW YORK STATE GROWN AND/OR PROCESSED INCENTIVES

- **Federal Procurement Law:** Public agencies and programs that use federal funds are not permitted to prefer locally produced products.

However, there are specific exceptions for USDA-administered programs that explicitly encourage local purchasing, including the National School Lunch Act, the Child Nutrition Act, and the Child and Adult Care Food Program (“CACFP”).

- **NYS Executive Order 32 of 2023:** New York State EO32 of 2023 established state agency food purchasing goals for NYS agricultural products. It includes the following definitions.
 - » **NYS Food Products:** “Agricultural products and food items that are grown, harvested, produced, or processed in the State of New York. Processed food items that are composed of raw materials from both inside and outside the State may be deemed New York State Food Products when (i) their predominant value or quantity is derived from food grown, harvested, or produced in New York State and (ii) the processing of such food products takes place in facilities that are located in New York State.”
 - » **Agricultural products and food items:** “All articles of food or drink, intended for human consumption that may be purchased using any funding stream managed by any State Agency, including any federally funded programs.”
- **New York State Grown and Certified Program:** Agricultural products must be grown and produced in New York State, from farms that participate in third-party food safety verification programs (if applicable to the specific product), and from producers that participate in an environmental management program. Processed food/beverage products must contain 51% or more of ingredients from products grown, raised, or produced on farms certified under New York State Grown and Certified.
- **General Municipal Law §103(8a):** This general municipal law subsection allows city contracting agencies “to require 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.”

- **Local Law 50 of 2011:** This law requires the Mayor’s Office of Contract Services to establish **guidelines** for city agencies to increase the purchase of New York State food products through public food contracts. It includes the following definition.
 - » **New York State food products:** “Food products whose essential components are grown, produced or harvested in New York state, and processed food that is processed in facilities located within New York state.”

- **State Finance Law §163 (see Section 3.0):** Under State Finance Law, municipalities can apply a quantitative factor for small businesses using the definition outlined below.
- **Small Business:** “A business which has a significant business presence in the state, is independently owned and operated, not dominant in its field and employs, based on its industry, a certain number of persons as determined by the director, but not to exceed three hundred, except during a declared state disaster emergency as defined pursuant to State Executive Law **§28 (State Declaration of Disaster Emergency)**, not to exceed three hundred employees who work thirty or more hours per week over the period of fifty-two weeks for a total of one thousand five hundred sixty hours worked, taking into consideration factors which include, but are not limited to, Federal Small Business Administration standards pursuant to 13 CFR part 121 and any amendments thereto. The director may issue regulations on the construction of the terms in this definition. For purposes of this subdivision, an employee may break from employment for up to thirteen weeks without the fifty-two week lookback period resetting.”
 - » **Note: For the purpose of the CFPP, the modeling team will identify criteria for “small business” that makes sense in the context of the three food products.**

4.3 COMMUNITY HIRING INCENTIVES ENABLING LEGISLATION

- **Senate Bill S7387B:** New York State legislation authorized the Office of Community Hiring (OCH) to establish certain rules to preference bidders who employ economically disadvantaged individuals. The Community Hiring Rules will go through the formal rulemaking process under the City Administrative Procedure Act (CAPA), which includes, among other things, notice and opportunity for public comment. The NYC Office of Community Hiring has not yet published rules governing this legislation.
 - » **Economically Disadvantaged Individual:** an individual “(1) whose income or household income falls below an applicable quantitative threshold determined by the director, provided that such income shall not include any types of public benefits provided by the federal government or a state or local government and identified by the director; and (2) who is certified as meeting all applicable requirements.” While the rules are not final, this will likely mean following within 300% of the federal poverty level. This will only apply to service contracts, not goods.
- **Code of Federal Regulations Title 13 part 121:** Outlines federal small business administration standards. See Definition of “small business,” below.
- **State Executive Law §28 (State Declaration of Disaster Emergency):** See small business definition below.

4.4 MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE (M/WBE) INCENTIVES

- **New York City Minority and Women-Owned Business Enterprises (M/WBE) Program:** This program expands opportunities for minority and women entrepreneurs to access government contracts and grow their businesses. When eligible businesses are certified with the City, they become more visible to prospective buyers, including City agencies and private contractors seeking to purchase goods and services. In order to become certified, businesses must meet the criteria outlined in the program pertaining to the business ownership, location, legal status and structure, and operation history.

- **Local Law 1 of 2013** This law established specific goals for M/WBE participation in NYC contracts based on industry and M/WBE categories.
- **M/WBE Price Preference Rule:** Under NYC procurement policy board rules, “if an award will be made based on best value, a vendor that is an M/WBE or State-certified M/WBE must, except with the approval of the chief contracting procurement officer, be given a price preference of 10% and will be evaluated as if the bid price were 10% lower.”
- **M/WBE Procurement & Contract Method:** This process rule by the City of New York allows agencies to contract directly with a M/WBE instead of going through formal competitive procurement method on contracts up to \$1.5 million.

4.5 PUBLIC INVESTMENTS IN MIDDLE FOOD SUPPLY CHAIN INFRASTRUCTURE

- **Resilient Food Systems Infrastructure Program.** This State-level program, supported by U.S. Department of Agriculture funding, provides grant support for the development of aggregation, processing, manufacturing, storage, transport, wholesaling, or distribution of food products. More information available at <https://agriculture.ny.gov/resilient-food-systems-infrastructure-program>.
- **This analysis did not identify laws/policies providing definitional guidance.** The following definitions are offered by the project team.
 - » **Middle Food Supply Chain Infrastructure** – Middle Food Supply Chain Infrastructure refers to the aggregation, processing, and/or distribution infrastructure necessary to move agricultural products to their final market destination and/or to process raw agricultural products into a form usable by the end market destination. These may include, but are not limited to infrastructure such as cold storage facilities for produce aggregation and distribution, processing facilities for beef, cooking/processing facilities needed to create processed food products, etc.
 - » **Infrastructure Investments** – This refers to the manner by which the City or State of New

York will financially support the development of middle infrastructure both within City Limits and in the rest of New York State. Modes of investment may include providing grants, loans, other financial support or technical assistance to entities seeking to develop critical infrastructure.

4.6 MENU REQUIREMENTS CHANGES

- **USDA Nutrition Standards for School Meals:** NYC Department of Education Office of Food and Nutrition Services meals must also meet the USDA nutrition standards set forth in 7 CFR Parts 210 and 220 in addition to the NYC Food Standards (see below).
- **The Child and Adult Care Food Program (CACFP):** CACFP “is a federal program that provides reimbursements for nutritious meals and snacks to eligible children and adults who are enrolled for care at participating child-care centers, day care homes, and adult day care centers.” Meal and snack programs at NYC Department of Homeless Services and NYC Department of Community and Youth Development must meet requirements of the CACFP program in addition to the NYC Food Standards.
- **New York State Office for the Aging Nutrition Program Standards:** These State program standards establish program requirements for all local government Agencies on Aging, including NYC Aging. These program standards include nutritional standards that “ensure all local Area Agencies on Aging (AAA) are compliant with the Older Americans Act Nutrition Program requirements as described in the New York State regulations governing the Nutrition Services and Programs.”
- **New York City Food Standards:** The NYC Food Standards outline requirements for food purchased and meals and snacks served by City agencies and their contractors, with the goal of improving the health of all New Yorkers. They minimize processed and red meat, added sugars, and saturated fat, and set minimum requirements for fruits, vegetables, whole-grains, and plant-based proteins. Under the current standards, each

agency must provide one serving (defined by the item appearing on the menu) of plant-based entrees per week per meal type. These standards include the following definitions.

- » **Minimally Processed Plant-Based Proteins:** “Any item with an unprocessed plant-based protein or flour made from unprocessed plant-protein listed as the first or second ingredient on the Nutrition Facts label and that does not contain high-fructose corn syrup, hydrogenated oils or hydrolyzed proteins.
- » **Plant-Based Entrees:** “An entree that includes a whole or minimally processed plant-based protein item such as beans, chickpeas, lentils, edamame, tofu, nuts and seeds as the primary protein component.”

5.0 KEY CONSIDERATIONS

This summary outlines legal and policy factors influencing the implementation of current and potential values-based procurement policies by the City of New York. In this final section, we outline lingering questions concerning the community hiring policy proposal. Among these potential policy options, implementation of the community hiring policy proposal contains the most uncertainty regarding how it would be implemented and how key terms will be defined.

The community hiring policy proposal would be a novel and unprecedented incentive structure in NYC procurement. The novelty of the policy proposal raises critical administrative questions. First among these, implementing this policy proposal will require clarifying where in the supply chain the community hiring incentive would apply. Hiring of economically disadvantaged individuals by small businesses occurs throughout the supply chain from agricultural production to processing and distribution. Prior to implementation, this policy will need to stipulate where a community hiring incentive can be applied when reviewing supplier/contractor bids.

Additionally, the community hiring proposal contains two distinct elements, community hiring and small business. The degree to which a given bid or proposal

would be evaluated based on each of these elements will require detailed scoring criteria. Thus, before this policy can be implemented, policy designers will need to clarify how support for these two areas will be scored by bid/proposal evaluators so that scoring is fair.

In addition to uncertainty about how the policy would be implemented, there are also questions regarding how key terms will be defined. Currently, two features – hiring economically disadvantaged individuals and supporting small businesses – are critical terms for the enactment of the policy. State law does provide clarification of what constitutes an economically disadvantaged individual. Furthermore, federal and state law provide guidance on what constitutes a small business according to the Federal Small Business Administration and the State finance law. However, both core concepts require further clarification to effectively develop policies that advance these areas in values-based procurement. Defining these terms raises both political and administrative questions.

Defining community hiring may result in political and/or legal challenge to the definition and/or policy. Rules governing community hiring that employ the State definition of economically disadvantaged individual must go through a formal rule-making process outlined by the City Administrative Procedures Act (CAPA). This rule-making process will be essential to establishing actionable criteria and processes needed for implementation. Yet, the public comment process may result in legal/political challenges to the proposed rules that may necessitate further revision to the definition, criteria, and processes.

Similarly, the Federal Small Business Administration and State finance law provide definitions of small business. However, these definitions are intended for business support programs and taxation and the definitions of small business may not be relevant to food procurement decision making. For example, the maximum of 300 employees noted in the State definition of small business is likely too high to provide useful guidance to procurement decisions seeking to support relevant small- and mid-scale farms. Industry-specific guidance on what constitutes a small business will be needed.