

LEVERAGING CONTRACTS

— *for* —

LOCAL FOOD PROCUREMENT

A GUIDE FOR INSTITUTIONS
THAT WORK WITH FOOD SERVICE
MANAGEMENT COMPANIES



Credit: Katy Hiza

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five FARM to INSTITUTION
NEW ENGLAND

INTRODUCTION

Food service management companies dictate the parameters of institutional food procurement for many hospitals, schools districts and colleges in New England and around the country.

As the farm to institution movement matures, advocates have realized that they must better understand these companies to have a significant impact on institutional procurement of regionally produced and processed foods. The Farm to Institution New England (FINE) Contracted Food Service Action Project (CFSAP) aims to increase the understanding of how food service management companies (FSMCs) work by compiling regional and cross-sector information about the operational practices of the largest FSMCs in the region: Compass Group and Sodexo. For this project, researchers conducted over 40 interviews with food systems advocates and FSMC staff.

This report is an outgrowth of that research. It aims to assist institutions that are managed by FSMCs to influence the request for proposal (RFP) and contract negotiation processes to increase purchases of local foods. The document begins by describing the different types of contracts typically used with FSMCs and the ways in which local food procurement is incorporated. Then it describes the role of the RFP and provides questions to consider when soliciting proposals, in order to vet companies that best meet the institution's needs. Next, this document calls out key components of typical contracts that need to be negotiated to improve the ability of institutions to purchase local food items. Lastly, this document provides a brief resource section providing sample RFP and contract language and New England companies that specialize in food service contract negotiation.¹

ACKNOWLEDGEMENTS

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¹ Please note, Farm to Institution New England does not endorse specific companies or consulting firms. The companies listed in this section are provided as examples of available resources and should be vetted by individual institutions before engaging in a working relationship.

CONTRACT TYPES

There are two main types of contracts between FSMCs and their clients: (1) Profit and Loss (P&L) and (2) Management Fee

Under a P&L Contract, the FSMC assumes the most financial risks and reaps the majority of rewards of the food service operation. Generally, the P&L Contract gives more autonomy to the FSMC to design a program of their choosing, with some guidance from the client particularly in the contract process. The contractor receives a management fee and payment for their services in the form of profits that are generated by the food service operation. If the operation loses money, the loss is to the FSMC, not the institutional client. Management Fee Contracts require the management company to provide a food service program specified by the institutional client. In return they are paid a management fee, typically as a percentage of revenue.² This type of contract is a greater risk to the client because the operating fee is typically the same whether or not the food service operation is profitable. However, the Management Fee Contract can offer the client more control over the operation, including sources of product if they are willing to accept any financial implications.

COMPARISON OF CONTRACT TYPES

	Profit & Loss Contract	Management Contract
Financial Risk/ Opportunity	FSMC faces primary risk of loss and opportunity for gain	Institution faces primary risk of loss and opportunity for gain
Management Fee	Typically a flat rate that covers basic overhead	Typically a percentage of revenue
Ability to Alter Contract	Limited flexibility	Enhanced flexibility

DEFAULT EXCLUSION OF LOCAL FOOD FROM STANDARD CONTRACTS

Many New England based institutions that contract with FSMCs find it difficult to purchase products from local farms. Most contracts require institutional clients to purchase at least 80% of their food items from approved or preferred vendors of FSMCs in order to benefit from negotiated discounts. These approved vendors are typically national manufacturers and suppliers who arrange discounts with FSMCs based on large sales volume and/or provide rebates. This system makes it difficult for smaller New England producers to become approved

² Rebates are refunds or discounts paid to FSMC from distributors, manufacturers and suppliers, or both, based on volume of sales. They are one of the primary ways that FSMC maintain profitability. Legally, rebates must be passed on to public institutions like public schools; however there is little oversight to ensure that this happens. They are typically not passed on as savings to private institutions.

vendors, because their scale does not allow for the same rebates or volume discounts. Under this system, procurement from local farms and food businesses is restricted to the small number of larger approved regional producers and the limited “off-contract” purchases.

Food service management companies do have a process that institutions can use to get a new manufacturer or farmer approved. However, this process can take up to six months, puts a large paperwork burden on the farmer, requires costly insurance and certifications, and typically results in a denial if a similar item is available from an already approved vendor. This makes it extremely cumbersome for new local farmers or vendors to tap into this market.



Credit: Chris Manzella

USE OF REQUEST FOR PROPOSALS

Many institutions issue a request for proposal (RFP) in the process of selecting a FSMC to manage their food service operations. The RFP presents an opportunity for an institution to narrow the pool of FSMCs to those that are best aligned with the institution's values. To solicit the information that will be most useful in identifying the best suited management company an RFP should include probing questions that will demonstrate how the company operates and if they are able to meet the institution's needs.

Here are four important components to determine if a FSMC can meet an institutions local food needs:

#1: PROVIDE A CLEAR DEFINITION OF LOCAL

Local does not mean the same thing to everyone. Depending on the definition, a FSMC may or may not have the relationships to enable provision of sufficient quantity of high quality products. Some common definitions of local being used in New England include items produced: (1) in-state, (2) in the six-state region, (3) within 250 miles of the institution, or (4) a tiered approach that prioritizes in-state, then regional and national or global products last.

To ensure that a FSMC can provide a sufficient supply of local products an institution may want to consider asking the following questions:

1. Please provide a list of all the local items currently available.
2. Are you able to provide town or state of origin for the products you offer?
3. What requirements must a farm or food business meet to be approved by your FSMC?
 - A. Do they need a good agricultural practices (GAP) certification?
 - B. What level of liability insurance must they carry?
4. What if any support do you provide to farm and food businesses to meet those requirements?
5. Do you currently have plans to expand availability of local products in New England? If so, please explain.

#2: VET THE FOOD SERVICE MANAGEMENT COMPANY'S TRANSPARENCY

An important part of having local procurement goals is evaluating whether they are being met. When an institution contracts with a FSMC, they become reliant on the FSMC and their vendors for information about the products they purchase including the product's place of origin. Some FSMCs have transparent ordering systems through which one can easily decipher a product's origins, however, many do not. The RFP is the perfect place to set expectations for transparent ordering and reporting and to determine a company's ability to meet those expectations.

Here are some important questions to consider when vetting the ability of a company to be transparent and track orders:

1. Are local items clearly marked on ordering guides by noting place of origin so the facility can determine if it meets their local definition?
2. Is information about local purchases tracked on invoices or standing reports?
3. Are reports that track client purchasing patterns available upon request?

#3: PROVIDE A CLEAR RATING SCALE FOR APPLICATIONS

Demonstrate the importance of local food by including it in rating scale by assigning a specific number of points to companies that are able to make procurement of local food as convenient as possible. Make it clear whether you are willing to entertain working with a company that does not have a track record of supporting local foods or whether this is required for them to earn your business.

Consider the weight placed on economics, overall sustainability, service and other components of a company's operations. How important is availability of local products in relation to these components? Make this clear by including your rating scale in the RFP and having availability of local food items as a stand-alone criteria for evaluation of proposals.



CONTRACT COMPONENTS

Clear criteria in your RFP should help narrow the pool of applicants to those companies who are able to work with your institution around local food procurement. However, ***the contract — not the RFP — is the legally binding document to which both the FSMC and the institutional client must abide.*** The language around local food that is included in the contract will set the terms for the tenure of the contract.

With that in mind, it is critical to ensure that institutional priorities are captured with regards to a few critical components of local procurement.

#1: PREFERENCE FOR LOCAL FOODS

New England is home to thousands of small farm and food businesses, most of which are not likely to have won approval by the selected FSMC. How will the institution go about purchasing products from these local suppliers?

Consider negotiation of a local food preference that enables off-contract procurement of local food items when an equivalent local food item is not available through an approved vendor. These purchases are not to be counted toward the allotment of off-contract purchases. For example, if local kale is not available through an approved vendor, then the institution can purchase kale from a local farm without it counting as an off-contract purchase.

#2: APPROVAL OF NEW LOCAL FOOD SOURCES

In an effort to enhance the sustainability of the New England food system, it will benefit some New England producers and manufacturers to become approved vendors for FSMCs. This will enable them to sell to institutional clients that were unable to negotiate local food preferences in their contracts. As such, the requirements for approval of New England producers may be a point of negotiation in an individual contract.

A major sticking point for many New England producers is the requirement that they receive United States Department of Agriculture GAP certification. Consider negotiation around acceptance of a HACCP-based plan or state GAP certification in place of this requirement.



#3: TRANSPARENCY & TRACKING

If an institution has set local procurement goals it will need to track the amount of products purchased by either dollars or pounds. Therefore, ease of identification for ordering and tracking is important. Under ideal circumstances, the FSMC will be able to identify the product's place of origin in an ordering guide. However, in instances when this is not possible consider requesting updates on local products on a weekly basis so that the food service director or chef can identify local items when placing orders.

Additionally, an institution will need summary reports of procurement of local food by category to determine if goals are being met. As such, institutions will need to include language requesting summary reports of purchases on a quarterly basis, or upon request.

#4: PRICE CONSTRAINTS

Contract negotiations will include an overall budget. In some instances, it is the budget that can inhibit local procurement when items are more expensive than those provided by larger national suppliers.

Consider a set aside of the budget that enables procurement of local products even when they are more expensive, up to an additional 15%, or other specified point.



SPLIT CONTRACTS

Another option for developing contracts that support local procurement is the use of split contracts. New England farm and food businesses are typically unable to meet the full demand for variety and quantity of an all-inclusive food contract. However, there may be food businesses that can provide high quality products for a smaller number of the items. These companies can be pulled into the bid process on contracts that focus on products produced and processed in New England.

Institutions who wish to increase their ability to purchase local food may want to consider excluding produce and/or dairy from their general contract with a FSMC. Instead, they can issue a second RFP requesting significantly higher portions of local procurement for produce and dairy, which are available throughout New England.

MANAGEMENT ONLY CONTRACTS

Finally, institutions may want to consider contracting with FSMCs for their management services only and maintaining food procurement as an in-house activity. As such, all decisions around purchase of food would be made by institutional staff. This arrangement enables institutions to capitalize on the expertise of FSMCs around managing retail and cooking operations, but enables them to maintain full control over the quality of food used by the institution.

The primary drawback of a management only contract is that the institution is no longer privy to discounted prices negotiated by the FSMC. One way to address this challenge is to work in collaboration with other nearby institutions to develop a buying group that pulls their purchases in order to obtain discounted rates.

RESOURCES

Below is a list of resources that provide detailed guidance on contract and RFP language. These resources may be of assistance as institutions engage in the soliciting proposals and selecting a food service management company:

Bellows, B., Dufour, R., and Bachman, J. (2013). Bringing Local Food to Local Institutions. <https://attra.ncat.org/attra-pub/summaries/summary.php?pub=261> Last accessed 9.17.2014

Farm to Institution New England. (2013). A Guide for Institutional Purchasers Sourcing Local Food from Distributors. <https://docs.google.com/file/d/0B-oDr1MRiE-LMTdCLWVOaE4wLVU/edit> Last accessed 9.17.2014

Harvard Food Law and Policy Clinic. (2013). Tools for Advocates: Increasing Local Food Procurement by State Agencies, Colleges and Universities. <http://blogs.law.harvard.edu/foodpolicyinitiative/publications> Last accessed 9.17.2014

Harvard Food Law and Policy Clinic. (2012). Increasing Local Food Procurement by Massachusetts State Colleges and Universities. <http://blogs.law.harvard.edu/foodpolicyinitiative/publications> Last accessed 9.17.2014

Harrison Institute for Public Law. (2013). Geographic Preference: A Primer on Purchasing Fresh, Local Food for Schools. http://www.schoolfoodfocus.org/wp-content/uploads/2013/07/FOCUS_GP_Primer_July-2013.pdf Last accessed 9.17.2014

Kaiser Permanente. (2014). Sustainable Food Scorecard. <https://noharm-global.org/documents/sustainable-food-scorecard> Last accessed 12.17.2014

Mass Farm to School. (2014). Sample Language & Resources for Local Foods in Contracts & RFPs http://www.farmtoinstitution.org/uploads/2/0/2/0/20206609/local_food_language_for_contracts_v2.pdf Last accessed 9.17.2014

United States Department of Agriculture. (2014). Guide: Procuring Local Foods for Child Nutrition Programs. http://www.fns.usda.gov/sites/default/files/F2S_Procuring_Local_Foods_Child_Nutrition_Prog_Guide.pdf Last accessed 9.17.2014

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