



# INCREASING LOCAL FOOD PROCUREMENT BY MASSACHUSETTS STATE AGENCIES

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## EXECUTIVE SUMMARY

In recent years, there has been increasing demand for locally grown food as consumers, policymakers, and advocacy groups recognize the health, environmental, and economic benefits of purchasing food from local farmers. Many states have noted the potential for public institutions to serve as leading purchasers of locally grown food (meaning, food produced within the state), and have enacted legislation instructing state institutions to apply a purchasing preference for food grown within the state. In 2006, Massachusetts enacted one such law, codified in the General Laws of Massachusetts at Chapter 7, Section 23B (Section 23B). Section 23B requires state agencies, as well as state colleges and universities, to prefer food products grown or produced in Massachusetts over foods grown or produced in other states. In order to effectuate this broad preference for Massachusetts-grown food products, the law requires state agencies—but not state colleges or universities—to purchase food products grown in Massachusetts, unless the price is more than 10% higher than the price of comparable out-of-state food products.

While Section 23B reflects the state legislature’s desire to increase the amount of Massachusetts-grown foods, not much local food is being purchased by Massachusetts state agencies. Many state agencies have yet to achieve full implementation of the 10% price preference as required by Section 23B. Discussions with agency officials and purchasers revealed that little progress has been made since Section 23B’s enactment in establishing contracts with vendors who source agricultural products from Massachusetts farms.

Under Massachusetts’ procurement law, state agencies are required to form Procurement Management Teams to oversee the creation of a Request for Response (RFR) that seeks bidders to satisfy a procurement solicitation. A procurement contract must meet a number of requirements including:

- ❖ it must be the best value to the state, as evidenced by nine different criteria;
- ❖ it must be awarded to a Small Business Purchasing Program participant if the contract is between \$50,000 – \$150,000 and other contract requirements are met;
- ❖ for procurements over \$150,000, it must contain a supplier diversity plan; and
- ❖ for contracts procuring food, it must comply with Executive Order 509, which established nutrition standards for agency procured food.

As a general rule, agencies are required to procure goods under existing statewide contracts. There are three statewide food contracts: the prime grocer contract, the dairy contract, and the baked goods contract. The prime grocer contract is the largest state agency food contract and requires bidders to supply both locally available and non-locally available food. To be in compliance with Section 23B, agencies are required only to include basic contractual language provided by Operational Services Division (OSD) (the state agency in charge of procurement). Vendors are required to make a firm commitment to purchase food grown in Massachusetts in their contract proposals in order to comply with Section 23B.

Interviews and discussions with key stakeholders from around the state revealed various barriers to successfully implementing Section 23B's goal of increased local food procurement. As discussed above, the bar for agency compliance with Section 23B is very low. Further, the bar for vendor compliance is also low; vendors that expressly acknowledged that they did not purchase locally grown food were still awarded contracts. Unlike other procurement support programs, there is very little information about Section 23B or how to increase local food purchasing on OSD's website. There is no mechanism to track nor report the amount of locally grown food. Without adequate tracking and reporting mechanisms, it is nearly impossible to measure and report ongoing progress in implementing Section 23B.

Although Section 23B provides a price preference for locally grown food purchased by agencies, it does not provide much incentive to purchase local food. Other states have used a benchmark to give agencies an indicator to work toward; a benchmark requires an agency to purchase a set amount of food or spend a certain amount of money on local food. Massachusetts does not have any kind of benchmark to push agencies to purchase local food. There are existing programs that provide procurement support to certain types of businesses – small business and minority-owned and women-owned business enterprises – that farmers could use to connect to agency purchasers, but have not done so. Farmer enrollment in the Small Business Purchasing Program and the Supplier Diversity Program is almost non-existent. Finally, the prime grocer contract requires bidders to be able to provide food that can be locally grown as well as food that cannot be locally grown. This could preclude local farmers from bidding on the prime grocer contract as vendor or subvendor.

Taking these barriers into consideration, the following recommendations can be pursued to increase local food procurement by Massachusetts state agencies:

- ❖ ***Advocate for the creation of educational materials on Section 23B for agency purchasers and farmers.*** Besides the basic contract language ensuring compliance with Section 23B, state agency food purchasers may not be fully aware of nor understand Section 23B and its requirements. To address this issue, there are several solutions, including the creation of educational materials and a local food purchasing directory, as well as providing informational sessions for farmers and agency purchasers.
- ❖ ***Advocate for the establishment of a tracking mechanism and reporting requirement for local purchasing.*** Although Massachusetts has a strong procurement preference law, there is currently no mechanism for tracking the amount of food that is being procured locally. Without this information, it is difficult to assess what opportunities exist for purchasing local food and any progress that is being made. Advocates should ask the legislature to establish a tracking mechanism within Section 23B. Additionally, requiring reporting of local food purchasing will establish a baseline and assist agencies in setting goals and finding ways to achieve those goals.
- ❖ ***Advocate for legislation to establish a benchmark for Massachusetts' local purchasing.*** One way to increase state agency accountability under Section 23B is to establish yearly benchmark goals for amounts of locally grown food purchased by each agency. The benchmark would take the form of a target percentage of food purchased by state agencies for a future year (e.g., by 2020, locally grown food will represent 15% of total dollars spent on food purchases).

- ❖ ***Encourage farmers to enroll in E.O. 503's Small Business Purchasing Program.*** The Small Business Purchasing Program (SBPP) requires agencies to award contracts between \$50,000-\$150,000 to SBPP participants. Although this existing program is a good option for farmers, it appears that no farmers are participating. Unless a new policy is created, establishing a program focused specifically on Massachusetts local food businesses, advocates can alternatively encourage farmers to enroll in Massachusetts' SBPP so that they can increase their chances of being awarded small food procurement contracts.
- ❖ ***Encourage farmers to enroll in the Supplier Diversity Program.*** The Supplier Diversity Program (SDP) encourages agencies to select bidders that work with minority- owned and women-owned business enterprises (M/WBE) by giving 10% of response evaluation points to a bidders' supplier diversity plan. To support these businesses, OSD maintains a list of M/WBE that are listed above other suppliers, sets a benchmark for agencies to meet, and provides other administrative support to agencies. For farmers that meet the SDP criteria, this could be another way to connect with agency purchasers to increase local food procurement.
- ❖ ***Advocate for a new policy establishing a Massachusetts-grown Agricultural Products Purchasing Program.*** Advocates can use Section 23B to garner support for a new policy (established through legislation or an executive order) to create a Massachusetts-grown Agricultural Products Purchasing Program (MAPPP). Under this policy, state agencies would be directed to give "special consideration" in their food procurement practices to Massachusetts farms or farm aggregators who enroll in the program. It would call for enhanced accountability, the development of benchmarks, an annual review of progress, as well as information-sharing processes, none of which is provided for under the current language of Section 23B. Another benefit of establishing this policy is that it would address the challenges state agencies currently face in tracking whether food products originate in Massachusetts. Under this policy, agencies would know whether a vendor sources a significant amount of food from local farms based on the vendor's MAPPP enrollment status and self-identification as a Massachusetts farmer or aggregator.
- ❖ ***Advocate for splitting produce contracts.*** Farmers and aggregators otherwise able to meet the volume of agency produce contracts nevertheless face the barrier that certain food items specified in the state contracts are not grown in Massachusetts and thus they cannot fulfill the RFR. To overcome this barrier, OSD can split the prime grocer contract and agencies can split their contracts so that all of the food able to be grown in Massachusetts is included in one contract, and all other food is included in another.
- ❖ ***Advocate for a regional preference in Section 23B, which would provide a 5-7% preference for food procured from New England.*** While the purchase of in-state food will do the most to strengthen the Massachusetts economy, agencies can add variety to their menus by sourcing beyond the state borders. Regional food systems are now recognized as valuable resources for maintaining healthy diets and economies. New England, in particular, has a strong and growing regional food economy that could contribute to and benefit from a regional food preference. When local food is not available, regionally sourced items should be in a second preference tier and be given a 5-7% preference, for example.

In addition to these overall recommendations, several opportunities to modify the purchasing practices of particular agencies to increase local purchasing were identified. These opportunities are discussed in more detail in the report. With assistance from advocates such as the Massachusetts Farm to School Project (the client for this report), agencies can make significant progress toward purchasing fresh, nutritious, locally-grown foods, invigorating Massachusetts' farming economy, and supporting a sustainable, local food system.

# I. INTRODUCTION

In recent years, consumer demand for locally grown food has increased steadily, as more people choose to spend their food dollars through farmers markets, farm stands, farm-to-table restaurants, community supported agriculture (CSAs), and grocery stores that source locally grown agricultural products.<sup>1</sup> There are a few main reasons why consumers purchase locally grown foods. In addition to environmental and nutritional concerns, consumers buy local because of its economic benefits to farmers and the local economy. As the market for locally grown food increases, it creates a stable and significant source of revenue for farmers, making farming a more viable profession and encouraging farmers to spend money in other parts of the local economy, such as on personal expenses, farm supplies from Massachusetts businesses, and hiring labor. Local food initiatives are particularly beneficial to small- and mid-sized farms, which derive a significant portion—if not all—of their revenue from local sales.<sup>2</sup> Purchasing food from a nearby farm also stimulates the local economy; money spent locally circulates within that community between six and fifteen times, supporting farms, businesses, and community members.<sup>3</sup> One Connecticut-based study showed that for each dollar in agricultural sales, an additional dollar is spent on other economic activity in the state.<sup>4</sup>

Recognizing other opportunities to support local agriculture apart from direct-to-consumer sales, local food advocates have begun to focus on institutional purchasing as an alternative marketing channel for locally grown food. Increasing local food procurement by institutions has a number of benefits. First, it demonstrates the growing demand for these local food products and supports the continued development and expansion of small- and mid-sized farms. Institutional purchasing of local food products is beneficial for farms that are currently selling through increasingly competitive and, at times, saturated retail markets. Second, local food procurement has economic benefits (as mentioned earlier) in that it keeps more dollars in the local economy rather than sending those dollars out of the state (or country). Third, consumers benefit from increased availability of fresh food in the institutions that source local food.

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<sup>1</sup> For example, the number of farmers markets in the United States has more than quadrupled over the past twenty years. *Farmers Markets and Local Food Marketing*, U.S. DEP'T OF AGRIC., <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateS&leftNav=WholesaleandFarmersMarkets&page=WFMFarmersMarketGrowth&description=Farmers+Market+Growth> (last visited Jan. 3, 2015).

<sup>2</sup> See Sarah A. Low & Stephen Vogel, *Direct and Intermediated Marketing of Local Foods in the United States*, U.S. DEP'T OF AGRIC. 4–5 (Nov. 2011), available at <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5097250> (last visited Jan. 3, 2015).

<sup>3</sup> KELLI SANGER & LESLIE ZENZ, WASH. STATE DEP'T OF AGRIC., FARM-TO-CAFETERIA CONNECTIONS: MARKETING OPPORTUNITIES FOR SMALL FARMS IN WASHINGTON STATE 2 (2004), available at <http://agr.wa.gov/Marketing/SmallFarm/docs/102-FarmToCafeteriaConnections-Web.pdf> (last visited Jan. 3, 2015).

<sup>4</sup> RIGOBERTO LOPEZ ET AL., ECONOMIC IMPACTS OF CONNECTICUT'S AGRICULTURAL INDUSTRY, UNIV. OF CONNECTICUT DEP'T OF AGRIC. AND RES. ECON. AND THE CONNECTICUT CTR. FOR ECON. ANALYSIS 5 (Sept. 2010), <http://www.are.uconn.edu/documents/economicimpacts.pdf> (last visited Jan. 3, 2015).

Many states have noted the potential for public institutions to serve as leading purchasers of locally grown food, and have enacted legislation to promote the use of food grown within the state by creating a procurement preference for in-state products or businesses.<sup>5</sup> In fact, according to research conducted for this report, thirty-seven states have some form of law that offers a preference to local products, fourteen of which focus specifically on local food products (for more information about local

### ***Local Food Sector Growth in Massachusetts***

In Massachusetts, the number of farms that sold agricultural products directly to consumers increased from 1,659 farms in 2007 to 2,206 farms in 2012. This means that in 2012 nearly 28.5% of the 7,755 farms in Massachusetts sold agricultural products through direct marketing outlets. The value of these direct marketing sales increased from \$42 million in 2007 to \$48 million in 2012. Some of these farmers may be seeking more stable market outlets, and increasing local procurement by Massachusetts agencies can provide that opportunity.

**Source:** U.S. DEP'T OF AGRIC., 2012 CENSUS OF AGRICULTURE, MASSACHUSETTS STATE DATA, TABLES 1, 2 (2014), *available at* [http://www.agcensus.usda.gov/Publications/2012/Full\\_Report/Volume\\_1,\\_Chapter\\_1\\_State\\_Level/Massachusetts/mav1.pdf](http://www.agcensus.usda.gov/Publications/2012/Full_Report/Volume_1,_Chapter_1_State_Level/Massachusetts/mav1.pdf).

procurement laws in the United States, see Appendix E: Procurement Laws across the United States).

In 2006, the Massachusetts Legislature passed its own local food procurement law, codified in the General Laws of Massachusetts at Chapter 7, Section 23B (Section 23B). The law requires state agencies to prefer Massachusetts-grown food over food grown outside of the state, unless the price of the in-state food exceeds the price of the out-of-state food by more than 10%.<sup>6</sup> In 2010, part of the law was amended to extend responsibility for procuring Massachusetts-grown food to state institutions of higher learning, although instead of being subject to the same 10% price preference, colleges and universities are only required to use “reasonable efforts” to purchase in-state food.<sup>7</sup> In fall 2012, the

Harvard Food Law and Policy Clinic published a report for the Massachusetts Farm to School Project<sup>8</sup> and the Massachusetts Food Policy Alliance<sup>9</sup> that analyzed Section 23B and its implementation by state colleges and universities, entitled: *Increasing Local Food Procurement by Massachusetts State Colleges & Universities*.<sup>10</sup> Based on interviews with several of the state college and university dining services programs and food service management companies, that report proposed recommendations to increase the purchasing of local foods by these academic institutions.

<sup>5</sup> See *infra* Appendix E: Procurement Laws across the United States.

<sup>6</sup> MASS. GEN. LAWS ANN. ch. 7, § 23B(a) (West 2013). The law is reproduced in full in Appendix B: Massachusetts General Laws, Chapter 7, Section 23B.

<sup>7</sup> School Nutrition, H.R. 4459, 186th Gen. Ct. (Mass. 2010).

<sup>8</sup> The Massachusetts Farm to School Project is a grassroots initiative that works to facilitate sustainable purchasing relationships between farms and institutions statewide to support the local agricultural economy and improve access to healthy food for all.

<sup>9</sup> The Massachusetts Food Policy Alliance is a group of stakeholders working to create a sustainable, effective, and inclusive food system for Massachusetts.

<sup>10</sup> See JONATHAN ABRAMS, ET AL., HARVARD FOOD LAW & POL'Y CLINIC, *INCREASING LOCAL FOOD PROCUREMENT BY MASSACHUSETTS COLLEGES & UNIVERSITIES* (2012), *available at* <http://www.chlpi.org/wp-content/uploads/2013/12/Increasing-Local-Food-Procurement-by-Mass-State-Colleges-FINAL2.pdf> (last visited Jan. 3, 2015).

As a follow-up to that report, the Massachusetts Farm to School Project requested an investigation of food procurement practices among the various Massachusetts state agencies, including a discussion of how well agencies are currently implementing Section 23B and ways in which agencies can increase efforts to purchase food grown within Massachusetts. In order to present the most accurate picture of the current procurement practices in Massachusetts, this report analyzes the Massachusetts law, integrates interviews with stakeholders involved in state agency procurement in Massachusetts, and includes data on local preference laws in other states, as well as offers policy recommendations.

This report begins with a discussion of Massachusetts' procurement laws, both in general and specifically for local food procurement. This is followed by an overview of Massachusetts' procurement practices and requirements, including a discussion of three statewide food procurement contracts. The report then identifies and discusses barriers to local food procurement and recommendations for how advocates such as the Massachusetts Farm to School Project can work to increase local procurement by those agencies, either by working within the existing legal framework or by pushing for further legislative or executive actions. Following that discussion are descriptions of and recommendations for the nine state agencies that serve food to dependent clients, collectively representing the largest food purchasers in the Executive Branch. Finally, the Appendices to the report contain important additional information referenced throughout the report, including the language of Section 23B, and charts illustrating procurement laws across the United States.

## II. RESEARCH METHODS

Massachusetts has eighty-two executive branch agencies, many of which purchase food to serve to employees and/or clients. Instead of surveying the practices of all eighty-two agencies, this report focuses on the nine agencies that serve food to dependent clients, as they represent the largest food purchasers. The nine agencies collectively serve forty-two million meals annually,<sup>11</sup> and thus have the purchasing power to impact the Massachusetts food economy. These agencies are:<sup>12</sup>

- Department of Children and Families;
- Department of Correction;
- Department of Developmental Services;
- Executive Office of Elder Affairs;
- Department of Mental Health;
- Department of Public Health;
- the sheriffs' offices;
- Department of Veterans' Services;<sup>13</sup> and
- Department of Youth Services.

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<sup>11</sup> Excluding snacks. CYNTHIA TAFT BAYERL, MASS. DEP'T OF PUB. HEALTH, MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH SKILLS AND STRATEGIES FOR DEVELOPING AND IMPLEMENTING FOOD PROCUREMENT POLICIES: EO 509 2 (2012), *available at* <http://fnce.eatright.org/fnce/uploaded/634796052281380677-225.%20Bayerl.pdf> (last visited Jan. 3, 2015).

<sup>12</sup> This list comes from a presentation given by Cynthia Taft Bayerl from the Massachusetts Department of Public Health. *Id.*

<sup>13</sup> This includes the Soldiers' Homes in Chelsea and Holyoke.

This report is based on in-depth research from a variety of sources as well as interviews with key participants and stakeholders. The research required identifying and analyzing relevant Massachusetts statutes and regulations pertaining to food procurement; understanding the Massachusetts' online procurement system, COMMBUYS (formerly known as the Commonwealth Procurement Access and Solicitation System (Comm-PASS)<sup>14</sup>); and reviewing and analyzing active agency food contracts and contract solicitations. Interviews with key agency personnel,<sup>15</sup> one farmer, and one aggregator supplemented the legal research.

## III. MASSACHUSETTS' CURRENT PROCUREMENT LAWS & POLICIES

State procurement is a highly standardized and regulated process in Massachusetts, and agencies must ensure that they purchase all goods and services on behalf of the state in accordance with Massachusetts' laws and regulations. This section provides the legal and regulatory framework, focusing both on the general and local food-specific requirements for all state agency solicitations for contracts and procurements, as well as standard practices followed by state agencies in Massachusetts.

### A. Massachusetts' Procurement Laws

State agencies engaged in food purchasing must comply with Massachusetts' overarching procurement regime and food specific purchasing requirements. Chapter 30 of Massachusetts General Laws establishes rules and regulations that all agencies must follow when purchasing any goods. Chapter 7 of Massachusetts General Laws contains other specific procurement provisions, including Section 23B, the local food procurement law (hereinafter "Section 23B"). This section introduces Massachusetts' current procurement laws.

#### 1. Chapter 30: Massachusetts' General Procurement Laws

Chapter 30 of the Massachusetts General Laws sets out requirements for the administration of the state government, including the procurement of goods by state government entities.<sup>16</sup> The legal requirements of Chapter 30 only apply to executive branch state agencies.<sup>17</sup> There are eighty-two agencies within the Executive Branch, all of which are subject to Chapter 30's procurement requirements. These agencies

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<sup>14</sup> Press Release, Operational Services Division, The Commonwealth's New Procurement System COMMBUYS (Nov. 4, 2013), available at <http://www.mass.gov/anf/docs/osd/commbuys/commbuys-announcement-to-statewide-contractors.pdf> (last visited Jan. 3, 2015).

<sup>15</sup> Key agency personnel included staff of the Department of Public Health, the Department of Correction, the Executive Office of Elder Affairs, the Department of Children and Families, and the Operational Services Division (Massachusetts' centralized procurement office).

<sup>16</sup> See generally MASS. GEN. LAWS ANN. ch. 30 et seq. (West 2013); MASS. GEN. LAWS ANN. ch. 30 § 51 (West 2013).

<sup>17</sup> MASS. OPERAT'L SERVS. DIV., PROCUREMENT OVERVIEW 3 (2013), available at [www.mass.gov/anf/docs/osd/pic/procurement-intro.doc](http://www.mass.gov/anf/docs/osd/pic/procurement-intro.doc) (last visited Jan. 3, 2015).

are listed in Appendix D: Massachusetts Executive Agencies.<sup>18</sup> Chapter 30 does not apply to the legislative or judicial branches, constitutional offices, elected offices, institutions of higher education, the military division, or independent public entities.<sup>19</sup> These entities, along with local cities, towns, and municipalities, are encouraged, but not required, to follow the procurement practices set forth for executive agencies.<sup>20</sup>

Under Chapter 30 of the Massachusetts General Laws, procurement of all goods and services needed by executive branch state agencies must be undertaken by, or under the direction of, the Operational Services Division (OSD).<sup>21</sup> OSD is an oversight agency in the Executive Office for Administration and Finance.<sup>22</sup> It establishes statewide contracts on behalf of agencies and other purchasers, provides technical assistance, and monitors compliance with applicable procurement statutes, regulations, and policies.<sup>23</sup> The Office of the Comptroller (CTR) also plays a role in agency procurement. CTR is an independent oversight agency, tasked with monitoring Massachusetts' broader fiscal activities.<sup>24</sup> CTR operates jointly with OSD to establish protocols for agencies forming procurement contracts.<sup>25</sup>

Each state agency is responsible for demonstrating compliance with all procurement laws and regulations by maintaining updated procurement files with OSD.<sup>26</sup> OSD, along with CTR, reviews the files to determine compliance and to ensure the quality of contractor performance.<sup>27</sup>

## 2. Chapter 7, Section 23B: Massachusetts' Local Procurement Law

When purchasing food, Massachusetts state agencies must also comply with Massachusetts' local procurement law. Section 23B was enacted in 2006 as part of an economic investment package designed to “promote job creation, economic stability, and competitiveness in the Massachusetts economy.”<sup>28</sup> Initially, the law applied only to a “state agency or authority,” and instructed procurement agents of those entities to apply a 10% price preference in their procurement processes to in-state

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<sup>18</sup> Nine of these eighty-two agencies—those that serve food to the public—are subject to both Operational Services Division procurement regulations and Massachusetts Executive Order 509 (establishing nutrition standards).

<sup>19</sup> 801 MASS. CODE REGS. 21.00(2) (2013).

<sup>20</sup> MASS. GEN. LAWS ANN. ch. 7 § 22A (West 2013).

<sup>21</sup> MASS. GEN. LAWS ANN. ch. 30 § 51 (West 2013).

<sup>22</sup> *Operational Services Division*, MASS.GOV, <http://www.mass.gov/anf/budget-taxes-and-procurement/oversight-agencies/osd/> (last visited Jan. 3, 2015).

<sup>23</sup> MASS. OPERAT'L SERVS. DIV., *supra* note 17, at 6–7. OSD is responsible for managing, monitoring, and enforcing the requirements of the Small Business Purchasing Program (SBPP), as created by Executive Order 523 (E.O. 523), and is tasked with assisting agencies in their implementation of Executive Order 509 (E.O. 509), which establishes nutrition standards for the foods that certain agencies serve. Mass. Exec. Order No. 523 (June 29, 2010), <http://www.mass.gov/governor/legislationexecorder/executiveorder/executive-order-no-523.html> (last visited Jan. 3, 2015); BILL MCAVOY & JOHN AUERBACH, MASS. OPERAT'L SERVS. DIV., OSD POLICY GUIDANCE 11-02 – REVISED GUIDANCE FOR EXECUTIVE ORDER 509 (n.d.), *available at* <http://archives.lib.state.ma.us/bitstream/handle/2452/205628/ocn843407657-2011-03-07.pdf?sequence=1&isAllowed=y> (last visited Apr. 11, 2015).

<sup>24</sup> MASS. OPERAT'L SERVS. DIV., *supra* note 17, at 7.

<sup>25</sup> CTR also issues standards related to making payments for commodities and services through the Massachusetts electronic accounting system, known as the Massachusetts Management Accounting and Reporting System (MMARS). *Id.*

<sup>26</sup> *Id.* at 9, 11.

<sup>27</sup> *Id.* at 11.

<sup>28</sup> Economic Investments, H.R. 5057, 184th Gen. Ct. (Mass. 2006).

agricultural products.<sup>29</sup> In 2010, the legislature added language to the statute pertaining specifically to state colleges and universities, requiring that they make “reasonable efforts” to facilitate the purchase of locally grown products.<sup>30</sup> The amendment as passed did not impose the 10% price preference requirement on colleges and universities,<sup>31</sup> although the original proposed bill would have done so.<sup>32</sup>

Section 23B requires state agencies to give preference in their procurement processes to agricultural products grown or produced in Massachusetts over agricultural products grown or produced in other states.<sup>33</sup> The law defines agricultural products broadly to include “fruits, vegetables, eggs, dairy products, meats, crops, horticultural products . . . as well as fish, seafood, and other aquatic products.”<sup>34</sup> Also included are value-added products processed “as part of a Massachusetts farm operation,” such as canned goods, dried fruits, or pre-cut produce, as well as products “produced using agriculture grown in Massachusetts.”<sup>35</sup>

Section 23B is divided into three parts. Subsection (a) states, generally, that Massachusetts agencies, authorities, colleges and universities must prefer food grown in the Commonwealth in their procurement processes.<sup>36</sup> To achieve this preference, subsection (b) instructs procurement agents for those state entities to “make reasonable efforts” in advertising for bids and contracts to “facilitate” the purchase of Massachusetts-grown food.<sup>37</sup> Subsection (c) applies only to state agencies and authorities, and requires them to purchase food grown in-state when the price of Massachusetts food is less than 10% more expensive than the price of food grown elsewhere.<sup>38</sup>

In early 2007, shortly after the legislature enacted Section 23B, OSD sent a guidance letter to all agency heads advising them of the new agricultural products preference law and providing instructions on how to comply with its requirements.<sup>39</sup> According to the OSD letter, agencies will be in compliance with Section 23B’s “reasonable efforts” requirement so long as they include certain language in their solicitations for

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<sup>29</sup> MASS. GEN. LAWS ANN. ch. 7, § 23B (West 2013).

<sup>30</sup> School Nutrition, H.R. 4459, 186th Gen. Ct. (Mass. 2010). For further information on Section 23B’s application to and implementation by state colleges and universities, *See* ABRAMS, ET AL., *supra* note 10.

<sup>31</sup> *See* MASS. GEN. LAWS ANN. ch. 7, § 23B(a) (West 2013).

<sup>32</sup> Local Farm Products Bill, H. 2107, 186th Gen. Ct. (Mass. 2009).

<sup>33</sup> MASS. GEN. LAWS ANN. ch. 7, § 23B(a) (West 2013). The law is reproduced in full in Appendix B: Massachusetts General Laws, Chapter 7, Section 23B.

<sup>34</sup> MASS. GEN. LAWS ANN. ch. 7, § 23B(a) (West 2013).

<sup>35</sup> *Id.* The law also incorporates by reference the language of Chapter 128, Section 1A, defining “agriculture” as “includ[ing] farming in all of its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products upon forest land, the raising of livestock including horses, the keeping of horses as a commercial enterprise, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in agriculture or farming as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage or to market or to carriers for transportation to market.” MASS. GEN. LAWS ANN. ch. 128, § 1A (West 2013).

<sup>36</sup> MASS. GEN. LAWS ANN. ch. 7, § 23B(a) (West 2013).

<sup>37</sup> *Id.* at § 23B(b).

<sup>38</sup> *Id.* at § 23B(c).

<sup>39</sup> COMMUNITY INVOLVED IN SUSTAINING AGRICULTURE, FARM TO CAFETERIA: A GUIDE TO BUILDING FARM TO SCHOOL RELATIONSHIPS IN MASSACHUSETTS 9 (2008) (referencing a letter from Ellen Bickelman, State Purchasing Agent, to Mass Dep’t Heads, Chief Fiscal Officers, & Gen. Counsels (Jan. 11, 2007)), *available at* [http://www.buylocalfood.org/~buylocal/upload/resource/Farm\\_to\\_school\\_manual08.pdf](http://www.buylocalfood.org/~buylocal/upload/resource/Farm_to_school_manual08.pdf) (last visited Jan. 3, 2015).

bids, without taking any additional steps.<sup>40</sup> The standard language merely informs potential bidders that the agency must purchase locally grown agricultural products unless the price exceeds 10% of the price of equivalent out-of-state products (see Appendix C for a copy of the letter in its entirety).<sup>41</sup>

## **B. The Procurement Process**

### **1. Competitive Bidding Process**

Under Massachusetts' procurement laws, procurement of food and all other goods and services must take place through a competitive bidding process, except for incidental purchases of goods not available on current statewide contracts, and other limited exceptions.<sup>42</sup>

For most large procurements (those with values greater than \$150,000), OSD forms Procurement Management Teams (PMTs) across agencies with common purchasing interests, to help ensure that the contracts offer the best value to the state.<sup>43</sup> These inter-agency teams participate in all aspects of the competitive bidding/procurement process: conducting research, determining the scope and specifications of the solicitation (a Request for Response (RFR)), soliciting responses from bidders, developing solicitation evaluation criteria, negotiating the contract, monitoring contract performance, and executing options to renew, when appropriate.<sup>44</sup> Teams consist of members from agencies that have an interest or expertise in the goods or services being purchased as well as the OSD staff members responsible for those particular categories of goods or services.<sup>45</sup>

For small procurements (those with values less than or equal to \$150,000), departments either individually or jointly create similar procurement teams, comprised of members of various agencies familiar with the goods or services being purchased as well as procurement staff within the particular agency conducting the procurement.<sup>46</sup> Individual departments may also request that staff from other departments or OSD join their procurement teams.<sup>47</sup>

For one-time unanticipated purchases of less than \$10,000, agencies may forego the procurement process (called an incidental purchase).<sup>48</sup> However, agencies may not make an incidental purchase of

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> 801 MASS. CODE REGS. 21.05, 21.06 (2012). Incidental purchases are "one-time, non-recurring, unanticipated" and have a maximum value of \$10,000. MASS. OPERAT'L SERVS. DIV., *supra* note 17, at 21.

<sup>43</sup> MASS. OPERAT'L SERVS. DIV., *supra* note 17, at 7-8.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 8.

<sup>47</sup> *Id.*

<sup>48</sup> MASS. OPERAT'L SERVS. DIV., INCIDENTAL PURCHASING POLICY GUIDANCE (2007), available at [www.mass.gov/anf/docs/osd/pic/ip.doc](http://www.mass.gov/anf/docs/osd/pic/ip.doc) (last visited Apr. 3, 2015); *OSD News Archives: OSD/CTR Issue New Policies*, MASS. OPERAT'L SERVS. DIV., available at <http://www.mass.gov/anf/budget-taxes-and-procurement/procurement-info-and-res/procurement-prog-and-serv/sdo/osd-archive-news-items.html> (last visited Apr. 3, 2015).

commodities or services that are available on statewide contracts.<sup>49</sup> As discussed below, food and agricultural products are available on statewide contracts.

The first step in the competitive bidding process is the drafting of an RFR, during which the procurement team—either a PMT or smaller department-specific procurement team—ensures that its RFR complies with all applicable OSD regulations.<sup>50</sup> For small procurements, the procurement team must include in the RFR notice of its intent to award the contract to qualified participants of the Small Business Purchasing Program (SBPP), in accordance with Executive Order 523 (E.O. 523).<sup>51</sup>

Once the RFR has been finalized,<sup>52</sup> it is posted to Massachusetts' online procurement system, COMMBUYS (formerly known as the Commonwealth Procurement Access and Solicitation System (Comm-PASS)).<sup>53</sup> Interested bidders may view and obtain an electronic copy of the RFR through COMMBUYS.<sup>54</sup> If the bidder wishes to place a bid, he or she must then submit a written response to the RFR.<sup>55</sup>

The procurement team evaluates the responses and selects vendors based on the “best value” principles outlined in OSD guidance documents.<sup>56</sup> A contract represents the “best value” to the agency and the state when it follows nine principles:

- (1) it supports the achievement of required performance outcomes;
- (2) it generates the best quality economic value;
- (3) it is performed timely;
- (4) it minimizes the burden on administrative resources;
- (5) it expedites simple or routine purchases;
- (6) it allows flexibility in developing alternative procurement and business relationships;
- (7) it facilitates competition;
- (8) it encourages the continuing participation of quality contractors; and
- (9) it supports state and department procurement planning and implementation.<sup>57</sup>

## 2. Other Procurement Requirements

In addition to ensuring a contract bid is the “best value,” there are other programs with which agencies may have to comply.<sup>58</sup> Two of these programs—the Supplier Diversity Program (SDP) and the Small

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<sup>49</sup> MASS. OPERAT'L SERVS. DIV., *supra* note 48.

<sup>50</sup> See 801 MASS. CODE REGS. 21.06(4) (2012); MASS. OPERAT'L SERVS. DIV., *supra* note 17, at 8.

<sup>51</sup> MASS. OPERAT'L SERVS., *supra* note 17, at 21.

<sup>52</sup> An RFR is finalized when the procurement team makes sure that the contract requirements are met and that the contract specifies the types of goods or services required.

<sup>53</sup> MASS. OPERAT'L SERVS. DIV., *supra* note 17, at 13; Press Release, Operational Services Division, *supra* note 1412.

<sup>54</sup> COMMBUYS, <https://www.commbuys.com/bso/> (last visited Jan. 3, 2015).

<sup>55</sup> MASS. OPERAT'L SERVS. DIV., *supra* note 17, at 21.

<sup>56</sup> 801 MASS. CODE REGS. 21.01 (2012); MASS. OPERAT'L SERVS. *supra* note 17, at 4–6; *OSD Guidance*, MASS. OPERAT'L SERVS. DIV., <http://www.mass.gov/anf/budget-taxes-and-procurement/procurement-info-and-res/conduct-a-procurement/osd-policies-regs/osd-policy.html> (last visited Jan. 3, 2015).

<sup>57</sup> MASS. OPERAT'L SERVS. DIV., *supra* note 17, at 4–6

Business Purchasing Program (SBPP)—are housed within the Supplier Diversity Office (SDO) of OSD. Agencies must also comply with a nutrition standards requirement established by Executive Order 509 (E.O. 509), which is overseen by a working group lead by the Department of Public Health (DPH).

### **Local Government Procurement**

As a complementary provision to Section 23B's locally-grown food procurement preference, in 2006, the legislature also amended Massachusetts' *local* government procurement law to exclude small contracts with in-state farms from its bid solicitation requirement.<sup>1</sup> Usually, local governmental bodies, such as cities, towns, counties, and school districts, must seek price quotes from at least three interested parties.<sup>2</sup> Under this exemption, for contracts valued at less than \$25,000, procurement agents may award contracts to "Massachusetts farm operations" without seeking more than one price quote, provided that the agent follows "sound business practices," meaning that the agent periodically solicits price quotes from vendors to ensure that the entity is receiving goods at a "reasonable" price.<sup>3</sup> This carve-out effectively allows school districts, as well as cities and towns, to enter into small sole-source contracts for local agricultural products without requiring other justifying circumstances that normally would be required under the formal bid solicitation process.<sup>4</sup> Unfortunately, the local government law does not currently apply to state agencies, and therefore agencies cannot take advantage of this small farm contract exception.<sup>5</sup>

<sup>1</sup> Economic Investments, H.R. 5057, 184th Gen. Ct. (Mass. 2006) (codified as amended at MASS. GEN. LAWS ANN. ch. 30B, § 4(d) (West 2013)). The Uniform Procurement Act, Massachusetts General Laws, Chapter 30B, applies only to local governmental bodies, not state agencies. See MASS. OFFICE OF THE INSPECTOR GEN., THE CHAPTER 30B MANUAL: LEGAL REQUIREMENTS, RECOMMENDED PRACTICES, AND SOURCES OF ADVICE FOR PROCURING SUPPLIES, SERVICES, AND REAL PROPERTY 2 (2011), available at <http://www.mass.gov/ig/publications/manuals/30bmanl.pdf>.

<sup>2</sup> MASS. GEN. LAWS ANN. ch. 30B, § 4(a) (West 2013).

<sup>3</sup> *Id.* at § 4(d); MASS. OFFICE OF THE INSPECTOR GEN., THE CHAPTER 30B MANUAL: LEGAL REQUIREMENTS, RECOMMENDED PRACTICES, AND SOURCES OF ADVICE FOR PROCURING SUPPLIES, SERVICES, AND REAL PROPERTY 4 (2011), available at <http://www.mass.gov/ig/publications/manuals/30bmanl.pdf>.

<sup>4</sup> For the procurement of other goods and services, agencies may not enter into sole source contracts unless they have undertaken a "reasonable investigation" and have determined and certified in writing that "only one practicable source" exists. MASS. GEN. LAWS ANN. ch. 30B, § 7(a) (West 2013).

<sup>5</sup> MASS. OFFICE OF THE INSPECTOR GEN., THE CHAPTER 30B MANUAL: LEGAL REQUIREMENTS, RECOMMENDED PRACTICES, AND SOURCES OF ADVICE FOR PROCURING SUPPLIES, SERVICES, AND REAL PROPERTY 4 (2011), available at <http://www.mass.gov/ig/publications/manuals/30bmanl.pdf>.

#### **a. Small Business Purchasing Program**

The purpose of the SBPP is to support and encourage the growth of small businesses in Massachusetts by directing state agencies to give "special consideration" in their procurement practices to small

<sup>58</sup> *Supplier Diversity Office*, OPERAT'L SERVS. DIV., <http://www.mass.gov/anf/budget-taxes-and-procurement/procurement-info-and-res/procurement-prog-and-serv/sdo/> (last visited Dec. 27, 2014).

businesses enrolled in the program.<sup>59</sup> E.O. 523 applies to the procurement of non-construction commodities and services by “all state agencies of the Executive Department,” which includes “all executive offices, boards, commissions, departments, divisions, councils, bureaus, offices” and other new and currently existing agencies.<sup>60</sup> All eighty-two agencies within Massachusetts’ executive branch must comply with E.O. 523.<sup>61</sup>

Small procurements—those valued between \$10,000 and \$150,000—must be awarded to qualified bids from SBPP participants.<sup>62</sup> Non-SBPP bidders may also bid on these small contracts, but they will receive an award only if no SBPP-participating bidder submits a response that meets contract requirements.<sup>63</sup>

The SBPP defines a “small business” as “[a]ny entity, including all of its affiliates combined” that:

- (1) *Has its principal place of business in Massachusetts;*
- (2) *Has been in business for at least one year;*
- (3) *Currently employs a combined total of fifty or fewer full-time equivalents in all locations;*
- (4) *Has gross revenues as reported on the appropriate IRS tax form of \$15 million or less, based on a 3-year average; and*

*EITHER*

a) *For any “For-Profit” Business Type:*

- i. *Is organized under the laws of the Commonwealth or is properly registered to do business in the Commonwealth; and*
- ii. *Is independently owned and operated.*

*OR*

b) *For any “Non-Profit” (i.e. 501(c)) Business Type:*

- i. *Is registered as a nonprofit or charitable organization and up to date on its filings with the Massachusetts Attorney General’s Office; and*
- ii. *Is tax-exempt under Section 501(c) of the Internal Revenue Code, i.e. organized and operated exclusively for exempt purposes set forth in section 501(c) and none of its earnings may inure to any private shareholder or individual.*<sup>64</sup>

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<sup>59</sup> Mass. Exec. Order No. 523, *supra* note 23.

<sup>60</sup> *Id.*

<sup>61</sup> MASS. OPERAT’L SERVS. DIV., *supra* note 17, at 9.

<sup>62</sup> *OSD Policy Guidance 14-01: OSD/CTR Revised Incidental Purchase Limit, New Due Diligence Posting Requirements, and Revised Procedures for Using Cooperative Purchasing Contracts Issued by Non-Massachusetts Public Entities*, MASS. OPERAT’L SERVS. DIV. 2 (2013), available at <http://www.mass.gov/anf/budget-taxes-and-procurement/procurement-info-and-res/conduct-a-procurement/osd-policies-regs/osd-policy.html> (last visited Jan. 3, 2015). Prior to 2011, when OSD revised its policies in light of E.O. 523, procurement teams were only required to give a 10% price preference to SBPP participants for small procurements; under the new regulations, however, OSD requires an absolute preference for bids below \$150,000, provided the bidder can meet contract specifications. MASS. OPERAT’L SERVS. DIV., *supra* note 17, at 21–22

<sup>63</sup> MASS. OPERAT’L SERVS. DIV., *supra* note 17, at 21.

<sup>64</sup> MASS. OPERAT’L SERVS. DIV., SUPPLIER DIVERSITY OFFICE: COMPREHENSIVE ANNUAL REPORT FY2012 42 (2012), available at <http://www.mass.gov/anf/docs/osd/sdo/forms/fy2012sdo-annual-report.pdf> (last visited Apr. 24, 2015).

OSD is the state agency responsible for overseeing the SBPP. OSD must “actively promote” the SBPP and provide technical assistance, outreach, and training to small businesses.<sup>65</sup> This ensures that the small business owners and operators understand Massachusetts’ procurement processes and the online COMMBUYS bidding system.<sup>66</sup> Through an OSD-developed system in COMMBUYS, small businesses can enter information into a database to determine eligibility and enroll in the SBPP.<sup>67</sup> OSD has the authority to audit these submissions and assess penalties against any business that misrepresents its status as a small business.<sup>68</sup>

To track the success of the SBPP, OSD is required to measure each state agency’s spending on goods and services provided by small businesses through different activities.<sup>69</sup> E.O. 523 instructs OSD to develop policies that require specific procurements, or portions of procurements, to be targeted toward small businesses.<sup>70</sup> Each year, OSD must work with state agencies and other officials to set benchmarks for the upcoming fiscal year’s small business expenditures amount.<sup>71</sup> OSD must prepare an annual report to the Secretary of the Executive Office for Administration and Finance discussing the program’s effectiveness, including an account of the total dollars spent on small business goods and services, the number of participants in the SBPP, and outreach and training efforts of the SBPP.<sup>72</sup>

Although the SBPP is located within OSD,<sup>73</sup> each agency must designate one of its employees as a “small business liaison.”<sup>74</sup> The liaison coordinates with OSD to support, monitor, and enforce the policies of the SBPP within his or her own agency.<sup>75</sup> State agencies must also make sure to input the small business designation for each purchase into the Massachusetts online accounting system, which allows OSD to track small business expenditures by each agency.<sup>76</sup>

Prior to 2011, agency procurement teams were only required to give a 10% price preference to SBPP participants for contracts valued between \$50,000-\$150,000; now, OSD requires an absolute preference, provided the bidder can meet contract specifications.<sup>77</sup> Procurement teams are also encouraged, but not required, to award large procurements, valued at greater than \$150,000, to SBPP participants.<sup>78</sup>

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<sup>65</sup> Mass. Exec. Order No. 523, *supra* note 23.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> MASS. OPERAT’L SERVS. DIV., *supra* note 64, at 42.

<sup>74</sup> Mass. Exec. Order No. 523, *supra* note 23.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> MASS. OPERAT’L SERVS. DIV., *supra* note 17, at 21.

<sup>78</sup> *Id.*

The SBPP has grown significantly since its inception in 2010. In FY 2011, OSD reported that expenditures through the program totaled \$59.7 million.<sup>79</sup> By FY 2012, expenditures through the SBPP had more than doubled to \$121.79 million, spent by seventy-two state agencies.<sup>80</sup> In FY 2013, spending with SBPP participants decreased slightly to \$121.74 million (a decrease of less than \$50,000).<sup>81</sup> Participant numbers in the SBPP have increased as well. In FY 2011, there were 1,852 SBPP participants; the number of participants increased to 2,600 by the end of FY 2012 (a 40% increase).<sup>82</sup> In FY 2013, the number of participants in the SBPP grew to 2,906 (an 11.7% increase).<sup>83</sup> State agency food-related expenditures through the SBPP, however, were extremely low in FY 2012, at only \$6,368, representing less than 1% of total spending through the program.<sup>84</sup> The breakdown of agency spending through the SBPP was not available in the FY 2013 annual report.

**Figure 1. State Agency Spending on SBPP Participant Goods and Services<sup>85</sup>**

FY 2011	FY 2012	FY 2012 Increase over FY 2011
\$59,693,832	\$121,790,070	\$62,096,238

FY 2012	FY 2013	FY 2013 Decrease over FY 2012
\$121,790,070	\$121,741,368	(\$48,701.57)

For FY 2013, OSD set a benchmark for state agency spending through the SBPP at 2.5% of the total annual discretionary budget.<sup>86</sup> In FY 2013, the Executive Department agencies exceeded the benchmark for spending with SBPP participants, spending nearly 3% of their discretionary budget through the SBPP.<sup>87</sup>

**Figure 2. FY 2013 SBPP Benchmark<sup>88</sup>**

FY 2013 Total Program Discretionary Budget	FY 2013 SBPP Benchmark (2.5% of Discretionary Budget)	SBPP FY 2013 Overall Expenditure	SBPP Spending as a % of Discretionary Budget Benchmark
\$4,072,869,113	\$101,821,728	\$121,741,368	119.62%

<sup>79</sup> MASS. OPERAT'L SERVS. DIV., *supra* note 64, at 42–43.

<sup>80</sup> *Id.*

<sup>81</sup> The decrease was \$48,701.57 in FY 2013. MASS. OPERAT'L SERVS. DIV., SUPPLIER DIVERSITY OFFICE: COMPREHENSIVE ANNUAL REPORT FY2013 19 (2014), available at <http://www.mass.gov/anf/docs/osd/sdo/forms/fy2013sdofinalannualreport.pdf> (last visited Dec. 27, 2014).

<sup>82</sup> MASS. OPERAT'L SERVS. DIV., *supra* note 64, at 50.

<sup>83</sup> MASS. OPERAT'L SERVS. DIV., *supra* note 81, at 19.

<sup>84</sup> MASS. OPERAT'L SERVS. DIV., *supra* note 64, at 48.

<sup>85</sup> *Id.* at 43; MASS. OPERAT'L SERVS. DIV., *supra* note 81, at 19.

<sup>86</sup> MASS. OPERAT'L SERVS. DIV., *supra* note 81, at 19.

<sup>87</sup> MASS. OPERAT'L SERVS. DIV., *supra* note 81, at 19.

<sup>88</sup> *Id.*

Currently, there do not seem to be any farmers participating in the SBPP;<sup>89</sup> however, nothing in the SBPP would prohibit farmers from joining. There is already a produce distributor based out of Everett listed in the SBPP directory; it is unclear how much of the produce is sourced locally, but there is mention of at least one locally sourced product (Kabocha squash).<sup>90</sup>

### ***b. Supplier Diversity Program***

For large procurements (those over \$150,000), bidders must include in their responses any plans to include minority-owned and women-owned firms as part of Massachusetts' Supplier Diversity Program (SDP).<sup>91</sup> When evaluating a bidder's response, procurement teams are required to dedicate at least 10% of the evaluation points to weighing the relative strength of each bidder's SDP plan.<sup>92</sup>

Each Executive Branch department has an SDP liaison that "is responsible for tracking participating departments' procurement expenditures with certified M/WBE [Minority and Women Business Enterprises]." <sup>93</sup> Executive Branch departments are required to set yearly spending targets, called benchmarks, with certified M/WBE.<sup>94</sup> These benchmarks are tracked and reported in the SDP Fiscal Year Report.<sup>95</sup> In FY 2013, the benchmarks were 6% for minority business enterprises and 12% for women business enterprises; Massachusetts agencies did not reach the minority business enterprise benchmark, but exceeded the women business enterprise benchmark in FY 2013.<sup>96</sup>

The SDO maintains a directory of certified M/WBE businesses; a search through the list shows forty-nine businesses that fall under the "Food & Groceries" industry categories.<sup>97</sup> Of those forty-nine certified M/WBE businesses, only a few indicate that they provide produce.<sup>98</sup> For example, Lun Fat Produce, Inc. sells vegetables, produce, and fruit.<sup>99</sup> Tending the Wild CSA is a community supported agriculture farm that provides "specialty food crops (including fruits, nuts and berries); and agricultural research, consulting, and education services."<sup>100</sup> There is also at least one produce distributor (IBS Commodities, Inc.).<sup>101</sup> Aside from Tending the Wild CSA, there do not appear to be any other farmers participating in the SDP.

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<sup>89</sup> Preliminary search of COMMBUY's business directory did not reveal any farms or agricultural businesses designated as SBPP participants. See *Business Directory*, COMMBUYS, <https://www.commbuys.com/bso/external/registeredVendorSearch.sdo> (select SBPP participant box at bottom of search criteria) (last visited Dec. 27, 2014).

<sup>90</sup> *Id.*; HOLDEN FRUIT & PRODUCE, INC., <http://www.holdenproduce.com/content/new-products> (last visited Dec. 27, 2014).

<sup>91</sup> MASS. OPERAT'L SERVS. DIV., *supra* note 17, at 21.

<sup>92</sup> *Supplier Diversity Program*, MASS. OPERAT'L SERVS. DIV. 1 (2013), available at [www.mass.gov/anf/docs/osd/pic/sdp.doc](http://www.mass.gov/anf/docs/osd/pic/sdp.doc) (last visited Jan. 3, 2015).

<sup>93</sup> *Supplier Diversity Program*, MASS. OPERAT'L SERVS. DIV., THE SUPPLIER DIVERSITY OFFICE, <http://www.mass.gov/anf/docs/osd/sdo/sdp/brochure.pdf> (last visited Dec. 27, 2014).

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> MASS. OPERAT'L SERVS. DIV., *supra* note 81, at 16.

<sup>97</sup> *Directory of Certified Businesses Search*, MASS. OPERAT'L SERVS. DIV., THE SUPPLIER DIVERSITY OFFICE <https://www.sdo.osd.state.ma.us/BusinessDirectory/BusinessDirectory.aspx> (under Search Criteria, drill down under "Industry Category" and select "Food & Groceries – Related Equipment, Personnel, Services & Supplies") (last visited Dec. 27, 2014).

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

### ***c. Executive Order 509: Nutrition Standards for Food Purchased and Served by State Agencies***

Agencies procuring food must also comply with Executive Order 509 (E.O. 509). On January 7, 2009, in recognition of the growing concerns over diet-related health issues, Governor Deval Patrick signed E.O. 509 establishing nutrition standards for food purchased by state agencies after July 1, 2009.<sup>102</sup> E.O. 509 notes the health impacts of increasing rates of obesity in Massachusetts due to low consumption of fruits and vegetables, and recognizes the state's opportunity to promote healthy eating habits through leading by example.

The text of E.O. 509 indicates that it applies to all state agencies in the Executive Department that provide food as part of their basic services to clients or patients.<sup>103</sup> It does not apply to vending machines or other independent concessions that offer food for sale, to purchases of food served to employees, or to purchases of food for occasional events.<sup>104</sup> As per E.O. 509, DPH identified nine agencies that provide food as part of their basic services (the same nine discussed in this report).<sup>105</sup>

DPH was also tasked with establishing the nutritional guidelines for these agency food purchases.<sup>106</sup> DPH nutritional standards include requirements for these agencies to:

- increase whole grains;
- increase fruits and vegetables—preferably locally grown;
- use lean cuts of meat and poultry;
- use alternative protein sources (e.g., rice and beans and legumes); and
- use skim/non-fat dairy.<sup>107</sup>

The standards, however, are merely a baseline, and agencies are “encouraged to support emerging practices” that may enhance the health of the population served.<sup>108</sup> DPH encourages each agency to

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<sup>102</sup> Mass. Exec. Order No. 509 (Jan. 7, 2009), <http://www.mass.gov/governor/legislationexecorder/executiveorder/executive-order-no-509.html> (last visited Jan. 3, 2015).

<sup>103</sup> *Id.*; MASS. DEP'T PUB. HEALTH, EXECUTIVE ORDER 509: ESTABLISHING NUTRITION STANDARDS FOR FOOD PURCHASED AND SERVED BY STATE AGENCIES 1 (2011), available at <http://www.mass.gov/eohhs/docs/dph/com-health/nutrition-phys-activity/eo509-qa.pdf> (last visited Jan. 3, 2015).

<sup>104</sup> MASS. DEP'T PUB. HEALTH, *supra* note 103, at 1–3.

<sup>105</sup> Mass. Exec. Order No. 509, *supra* note 102. The nine agencies are: Department of Developmental Services; Department of Youth Services; Department of Public Health; Department of Mental Health; Department of Correction; Sheriffs' Offices; Executive Office of Elder Affairs; Department of Children and Families; and Department of Veterans' Services. MASS. DEP'T PUB. HEALTH, HELPING RESIDENTS EAT BETTER WITH EXECUTIVE ORDER 509 (2011), available at <http://www.mass.gov/eohhs/docs/dph/mass-in-motion/ss-eo509.pdf> (last visited Jan. 3, 2015); see also BAYERL, *supra* note 11, at 2. Eight of the agencies follow the Massachusetts Nutrition Guidelines, which were established under Executive Order (509) *Establishing Nutrition Standards for Food Purchased and Served by State Agencies*. The Executive Office of Elder Affairs has elected to follow age specific federal nutrition standards and monitoring system. Both nutrition standards are based on the Dietary Guidelines for Americans. Email from Cynthia Bayerl, Nutrition Coordinator, Mass. Dep't of Public Health (April 9, 2015) (on file with the author).

<sup>106</sup> Mass. Exec. Order No. 509, *supra* note 102.

<sup>107</sup> MASS. DEP'T PUB. HEALTH, *supra* note 103, at 1. See MASS. DEP'T PUB. HEALTH, MASSACHUSETTS STATE AGENCY FOOD STANDARDS: REQUIREMENTS AND RECOMMENDATIONS (2012), available at <http://www.mass.gov/eohhs/docs/dph/com-health/nutrition-phys-activity/eo509-state-agency-food-standards.pdf> (last visited Jan. 4, 2015) (providing a full listing of DPH's proposed standards).

<sup>108</sup> MASS. DEP'T PUB. HEALTH, *supra* note 103, at 1. To finalize these standards, DPH assembled an Advisory Workgroup and invited participation by key representatives of those agencies impacted by E.O. 509. BAYERL, *supra* note 11, at 4; MASS. DEP'T PUB. HEALTH, *supra* note 105.

designate an employee within the agency to oversee implementation of E.O. 509,<sup>109</sup> and OSD has included language in the standard agency RFR document indicating that all Executive Department agency food purchases must comply with nutritional guidelines established by E.O. 509.<sup>110</sup>

## ***E. Statewide v. Agency Specific Food Contracts***

There are two main types of procurement contracts: statewide contracts and agency-specific contracts. Procurement methods for both statewide and agency-specific contracts are set forth through regulations promulgated by OSD.<sup>111</sup> Goods available through statewide contracts range from copy paper and other office supplies to vehicles, building materials, medical supplies, and food products.<sup>112</sup> Food products, however, are treated a bit differently than other goods. There are three statewide food contracts procured by OSD: prime grocer, dairy, and baked goods. Individual state agencies can then establish additional food contracts for use only by their agency (i.e., not statewide). Some agencies order primarily from the statewide contracts and some manage their own food purchase contracts.

### **1. Statewide Contracts**

Statewide contracts—those procured on behalf of all state agencies—are established and managed by OSD, unless OSD designates another agency to conduct the particular procurement.<sup>113</sup> The duration of a statewide contract is typically one to two years, with several options to renew the contract.<sup>114</sup> Statewide food contracts harness collective buying power to achieve bulk discounts from large-scale contractors. Currently, Massachusetts has three statewide food contracts: the prime grocer contract (produce), the milk and dairy contract, and the baked goods contract. Agencies wishing to purchase through one of these three statewide contracts can access current food offerings through Massachusetts' online procurement website, COMMBUYS. Following is a description of the three statewide food contracts.

#### ***a. The Statewide Prime Grocer Contract***

With an estimated value of \$13 million annually,<sup>115</sup> Massachusetts' largest state agency food contract is the statewide prime grocer contract. The contract serves all state agencies and is available to all other public entities within Massachusetts, such as the legislative and judicial branches, state colleges and universities, as well as local towns and municipalities.<sup>116</sup> The prime grocer contract covers groceries and food products such as fresh and processed produce, canned goods, cereals, meats, frozen foods, pasta,

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<sup>109</sup> McAvoy, *supra* note 23.

<sup>110</sup> *Id.*

<sup>111</sup> 801 MASS. CODE REGS. 21.00 (2013); *see also* MASS. GEN. LAWS ANN. ch. 7 § 22 (West 2013).

<sup>112</sup> *See Statewide Contract User Guides*, MASS. OPERAT'L SERVS. DIV., available at <http://www.mass.gov/anf/budget-taxes-and-procurement/procurement-info-and-res/buy-from-a-state-contract/statewide-contract-user-guides.html> (last visited Jan. 4, 2015).

<sup>113</sup> 801 MASS. CODE REGS. 21.04 (2013).

<sup>114</sup> *See Statewide Contract User Guides*, *supra* note 112.

<sup>115</sup> MASS. OPERAT'L SERVS. DIV., REQUEST FOR RESPONSE: PRIME GROCER—GRO-30 2 (2012), <https://www.commbuys.com> (click on the "Contract & Bid Search" link, select "Contracts/Blankets," input "C138617-vCurrent" into Contract/Blanket # box and click "Find It," click the "C138617-vCurrent" link, in the list of agency attachments click "GRO30RFRFinal") (last visited Jan. 4, 2015).

<sup>116</sup> *Id.* at 1.

and specialty foods.<sup>117</sup> In 2012, the Department of Correction (DOC) accounted for the majority of agency spending through the prime grocer contract (55%, or over \$9.5 million), followed by the Sheriff's Department (15%), the Department of Youth Services (11%), Soldier's Homes in Chelsea and Holyoke (10%), with various other departments making much smaller purchases (see Figure 3).<sup>118</sup>

OSD handles the procurement process for this contract, with input from a procurement team consisting of eight representatives, mostly from the DOC but also from DPH and the Massachusetts Emergency Management Agency.<sup>119</sup> The 2012 RFR for the prime grocer contract informed bidders that the contract aims to promote the purchase of locally grown products and "nutritional, pesticide free produce wherever possible," in accordance with Massachusetts laws and directives.<sup>120</sup> The RFR required bidders to provide competitively priced organic counterparts to conventional fruit and vegetable for items classified by the Environmental Working Group as having the highest pesticide residue.<sup>121</sup> It also requested (but did not require) that bidders partner with smaller-scale farmers or certified organic growers to offer some "sustainably grown" products.<sup>122</sup>

Because the prime grocer contract is so large, and contains many different food products to serve multiple agencies' needs, each of the three main vendors on the prime grocer contract—US Foods, Performance Food Group, and Reinhart—subcontracts with a variety of smaller food suppliers to provide certain foods under the contract. For example, US Foods purchases frozen broccoli from Monarch, but purchases beans from El Pasado.<sup>123</sup> Appendix F: July 2014 Food Order Guides contains a list of products available from the July 2014 food order guides from the three main vendors listed above. As illustrated by the list in Appendix F, there is a wide range of products procured under the prime grocer contract. This statewide contract includes food products that both can be sourced locally (e.g., tomatoes, potatoes, and corn) and those that cannot be sourced locally (e.g., mango, pineapples, avocados). Because the contract requests both locally available and not locally available produce, it is more difficult for local producers and aggregators to meet the contract requirements, thus excluding these local producers and aggregators from competing for and winning the contract.

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<sup>117</sup> *Id.* The current contract's effective date is January 1, 2013, and runs until December 31, 2015, with three options to renew for an additional year. *See id.*

<sup>118</sup> *See* MASS. OPERAT'L SERVS. DIV., GRO14 PRIME GROCER: FISCAL YEAR 2012 SPEND (EXECUTIVE AGENCIES) (report generated Mar. 6, 2013) (on file with the author).

<sup>119</sup> *See* MASS. OPERAT'L SERVS. DIV., C138617-vCURRENT OD.XLSX (2012), available at <https://www.commbuys.com> (click on the "Contract & Bid Search" link, select "Contracts/Blankets," input "C138617-vCurrent" into Contract/Blanket # box and click "Find It," click the "C138617-vCurrent" link, in the list of agency attachments click "C138617-vCurrent OD.xlsx", then in the POHeader sheet find column AR for "Additional Team Members") (last visited Jan. 4, 2015).

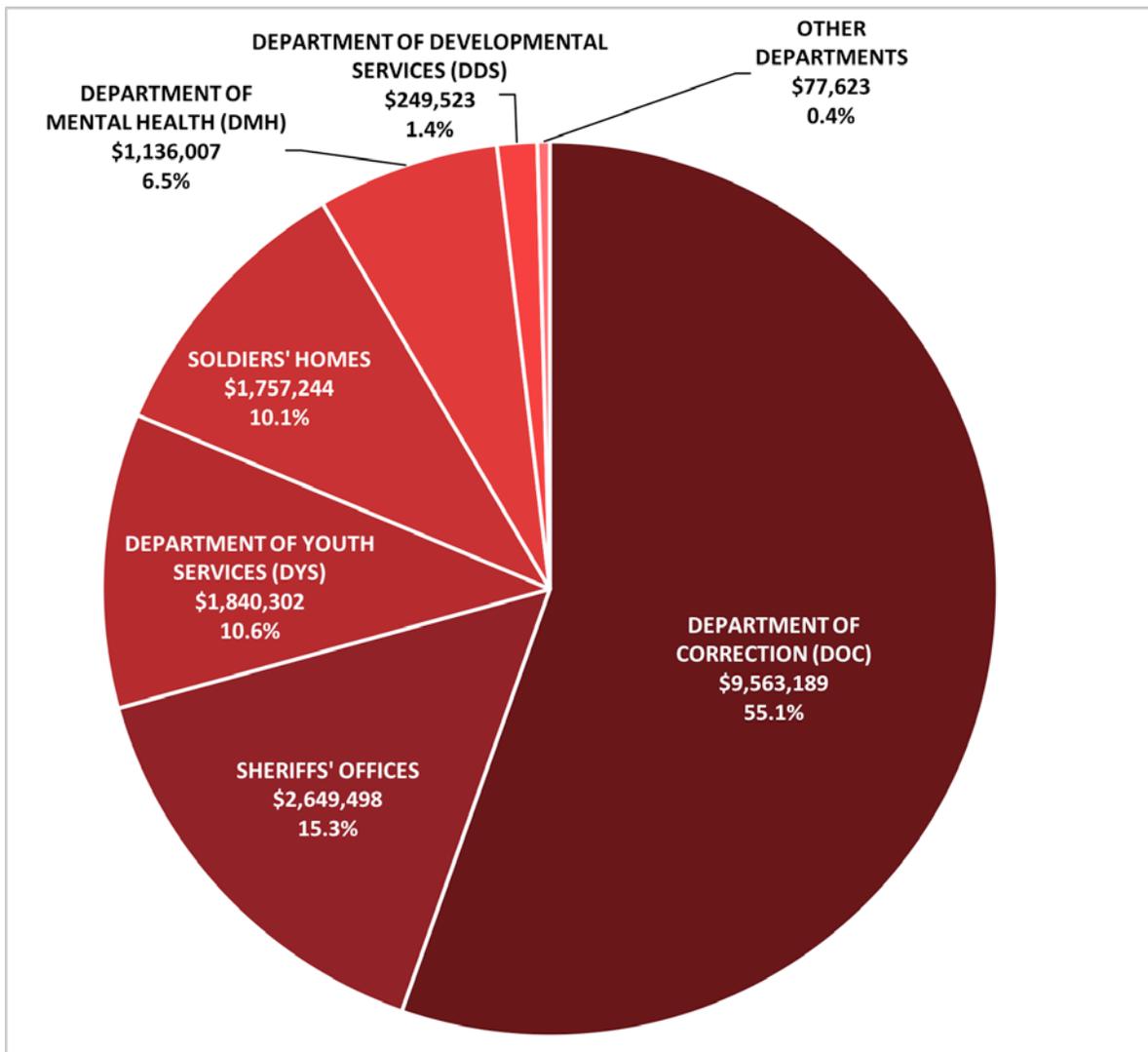
<sup>120</sup> MASS. OPERAT'L SERVS. DIV., *supra* note 115, at 1.

<sup>121</sup> MASS. OPERAT'L SERVS. DIV., *supra* note 115, at 5.

<sup>122</sup> *Id.* at 22.

<sup>123</sup> On file with the author.

Figure 3. Agency Spend on Prime Grocer Contract, FY 2012<sup>124</sup>



**b. The Statewide Dairy Contract**

The next biggest contract after the prime grocer contract is the statewide dairy contract, valued at \$5 million,<sup>125</sup> which covers products such as milk, juices, cheese, cream cheese, ice cream, butter, and margarine.<sup>126</sup> In FY 2012, the DOC accounted for the majority of expenditures through the dairy contract (56% or \$1.4 million), followed by the sheriffs’ offices (19.7%), the Soldiers’ Homes in Chelsea and Holyoke (8.4%), the Department of Mental Health (5.5%), and the Department of Children and Families

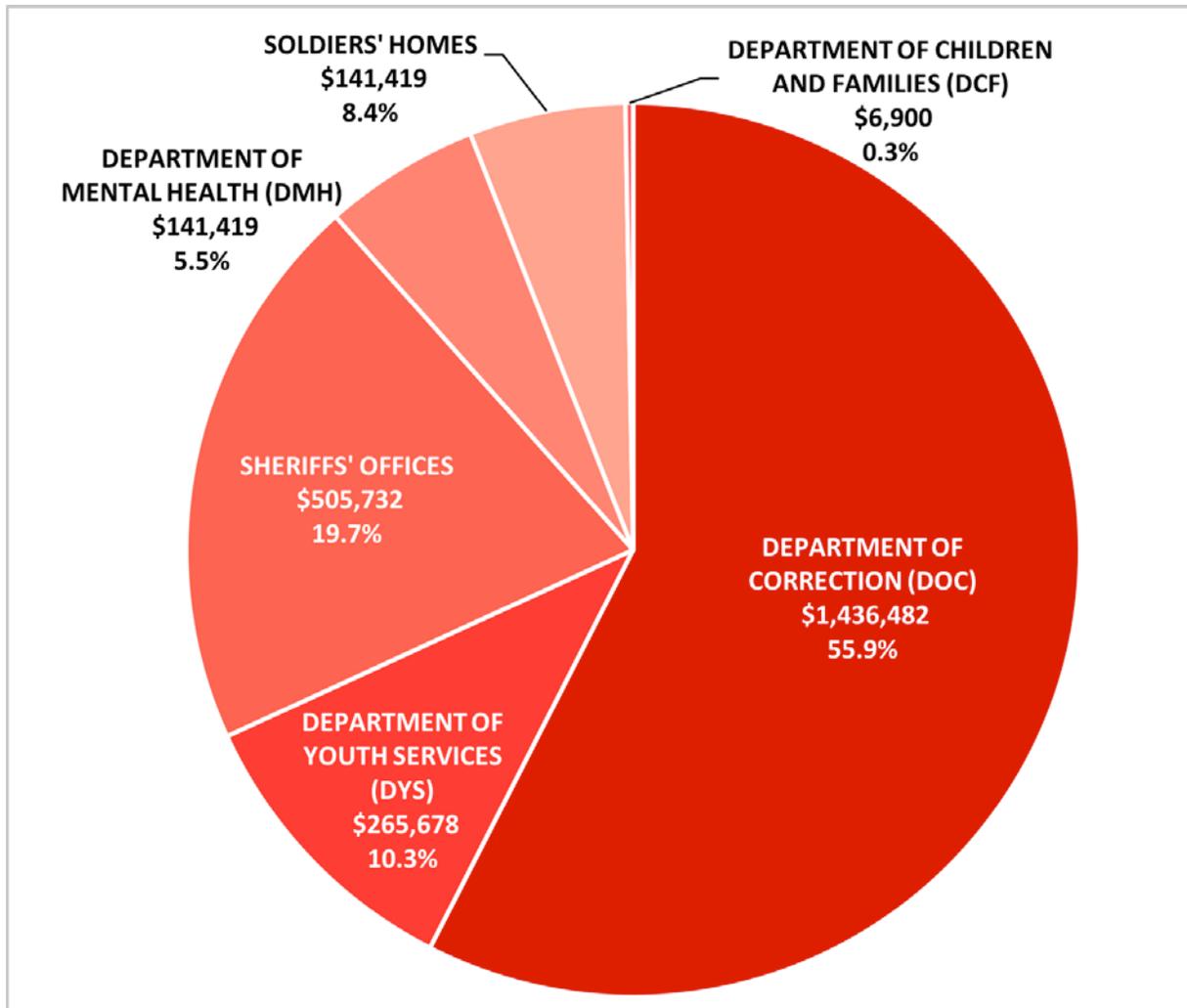
<sup>124</sup> See *id.*

<sup>125</sup> MASS. OPERAT’L SERVS. DIV., REQUEST FOR RESPONSE: DAIRY PRODUCTS—GRO-32 2 (2012), available at <https://www.commbuys.com> (click on the “Contract & Bid Search” link, select “Contracts/Blankets,” input “C145492-vCurrent” into Contract/Blanket # box and click “Find It,” click the “C145492-vCurrent” link, in the list of agency attachments click “GRO32RFRFinal”) (last visited Jan. 4, 2015).

<sup>126</sup> *Id.* at 1.

(0.3%).<sup>127</sup> Current vendors on the contract are Garelick Farms and Rosev Dairy Foods.<sup>128</sup> Garelick, like most processors in the fluid milk industry, sources from regional dairy farms,<sup>129</sup> while the Rosev's website does not specify from where it sources its fluid milk.

**Figure 4. Agency Spend on Dairy Contract, FY 2012<sup>130</sup>**



### ***c. The Statewide Baked Goods Contract***

There is also a statewide contract for baked goods, such as bread, danishes, bagels, and English muffins.<sup>131</sup> The contract is valued at \$2 million<sup>132</sup> and the sole vendor under the contract is Orograin

<sup>127</sup> MASS. OPERAT'L SERVS. DIV., GRO32 DAIRY PRODUCTS: FISCAL YEAR 2012 SPEND (EXECUTIVE AGENCIES) (report generated April 16, 2013) (on file with the author).

<sup>128</sup> *Master Blanket Purchase Order C145492-vCurrent*, COMMBUYS, <https://www.commbuys.com> (click on the "Contract & Bid Search" link, select "Contracts/Blankets," input "C145492-vCurrent" into Contract/Blanket # box and click "Find It," click the "C145492-vCurrent" link) (last visited Jan. 4, 2015).

<sup>129</sup> *About Us*, GARELICK FARMS, <http://www.garelickfarms.com/about> (last visited Jan. 4, 2015) ("Garelick Farms supports over 1,000 local farms throughout Massachusetts, Rhode Island, New Hampshire, Connecticut, Vermont, Maine and upstate New York.").

<sup>130</sup> See MASS. OPERAT'L SERVS. DIV., *supra* note 127.

Bakeries Sales, located in Albany, New York.<sup>133</sup> Because baked goods are not covered by Section 23B, research was not focused on this statewide contract.

## 2. Agency-Specific Contracts

Agencies must purchase goods and services through existing statewide contracts “100% of the time,” unless granted an exemption from OSD.<sup>134</sup> There are two ways agencies can purchase under an agency-specific contract. First, an agency can request an exemption from a statewide contract if the statewide contract does not meet its business requirements and the agency believes it is necessary to issue a separate RFR.<sup>135</sup> In that case, the agency must seek approval from OSD by explaining in detail the inadequacy of the existing statewide contract and estimating the anticipated procurement duration and value.<sup>136</sup> OSD reviews and tracks these requests, granting or denying approval within ten days of receipt of the request.<sup>137</sup> Second, if a statewide contract does not already exist, an agency may initiate its own procurement process, but OSD encourages agencies to determine first whether another agency has a similar active contract from which additional agencies may place orders.<sup>138</sup>

Agencies with individual contracts thus have either been granted exemptions from OSD to issue separate contracts, or the specific produce sought is not considered equivalent to the produce available through the prime grocer contract (most of which is frozen, canned, or precut). Department of Children and Families, DOC, and Department of Developmental Services have each developed their own contracts for food purchases.

## IV. CHALLENGES TO LOCAL PROCUREMENT

Although Section 23B requires that state agencies purchase locally grown food if it is not more than 10% more expensive than food grown outside of Massachusetts, it appears that very little local procurement is occurring at state agencies. Section III introduced and discussed the processes and requirements for procuring food for state agencies, and referenced some of the overarching challenges and barriers to increasing local procurement by state agencies. This section identifies and discusses in more detail those overarching challenges and barriers agencies face in procuring local food. Then, Section V includes recommendations for addressing the overarching challenges and barriers to achieving Section 23B’s goal.

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<sup>131</sup> MASS. OPERAT’L SERVS. DIV., REQUEST FOR RESPONSE: BAKED GOODS—GRO-33 1 (2012), available at <https://www.commbuys.com> (click on the “Contract & Bid Search” link, select “Contracts/Blankets,” input “C157532-vCurrent” into Contract/Blanket # box and select “Include Expired” and then click “Find It,” select the “C157532-vCurrent” link, in the list of agency attachments click “GRO33BakedGoodsRFR”) (last visited Jan. 4, 2015).

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> MASS. OPERAT’L SERVS. DIV., *supra* note 17, at 19.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *Id.* at 26 (outlining applicable competitive procurement requirements for non-statewide contract procurements).

## 1. Lack of Information about Section 23B

It appears that agencies are not provided much information about Section 23B that would assist them in complying with the statute. OSD has created numerous materials explaining and encouraging participation in the SBPP and SDP. There are no similar materials for Section 23B. Although agency purchasers all likely know about Section 23B, there are not a lot of supporting materials that could help agency food purchasers increase their local food purchases.

## 2. Lack of Incentive to Comply with Section 23B

Section 23B's wording and guidance documents contribute to some of the challenges. Although Section 23B requires that Massachusetts state agencies purchase locally produced food if it is not more than 10% more expensive than out-of-state food,<sup>139</sup> OSD's guidance documents indicate that agencies will be in compliance with Section 23B's "reasonable efforts" requirements so long as they include certain contract language in their solicitation for bids.<sup>140</sup> It appears that no other action by the agency is required to be in compliance with Section 23B.<sup>141</sup> This is a low bar for compliance and gives agencies little incentive to either seek out vendors of locally grown food or to demonstrate actual purchasing of locally grown food.

## 3. Lack of Data about Compliance

There is no explicit requirement, either in Section 23B or in OSD's guidance documents, that an agency request information from bidders about their local procurement purchasing practices other than their affirmation that they made "reasonable efforts" to procure local food products. The result is that when an agency puts out a bid for a food contract, bidders can submit responses without disclosing whether or not they supply locally grown food. This causes two major gaps in data that if collected could help agencies comply with Section 23B. First, this lack of data results in an inability to apply the preference, if applicable; second, it means that there is no way to track how much local food is being purchased.

Without this information, the agency is left accepting bids that contain little or no information about the geographic origin of these foods. If bidders are not required to disclose from where their products are sourced, the agency cannot determine whether to apply the 10% price preference for local foods called for under Section 23B. This information gap thwarts full implementation of Section 23B—an agency cannot prefer locally grown food when bidders do not account for which of their products, if any, are grown locally.

To illustrate this issue, consider a recent RFR for the prime grocer contract. The prime grocer RFR included the standard language regarding Section 23B's local purchasing requirements:

*Chapter 123 of the Acts of 2006 directs the State Purchasing Agent to grant a preference to products of agriculture grown or produced using locally grown products. Such locally*

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<sup>139</sup> MASS. GEN. LAWS ANN. ch. 7, § 23B(a) (West 2013).

<sup>140</sup> COMMUNITY INVOLVED IN SUSTAINING AGRICULTURE, *supra* note 39, at 9.

<sup>141</sup> *Id.*

*grown or produced products shall be purchased unless the price of the goods exceeds the price of products of agriculture from outside the Commonwealth by more than 10%.*<sup>142</sup>

The RFR response checklist requires bidders to submit a statement addressing compliance with the agricultural products preference law.<sup>143</sup> Although the checklist did not provide explicit instructions as to how bidders could demonstrate conformity with the law, it requested the names and locations of local farm suppliers from whom the bidders purchase.<sup>144</sup> The RFR indicated that these statements would be considered during the evaluation stage, but did not specify how much weight would be given to the company's local purchasing response, compared with all other criteria under consideration, such as price of goods, company experience, and financial stability.<sup>145</sup> In contrast, the RFR stated that the SDP would be given a minimum of 10% weight, demonstrating that OSD could assign a specific weight to locally grown food considerations but had not done so.<sup>146</sup>

After bids were received and evaluated, OSD awarded the contract to four vendors: US Foods, Performance Food Group, Reinhart Foodservice, and Sysco Boston.<sup>147</sup> Sysco Boston has since been removed from the list of vendors. Of the three remaining vendors, only Performance Food Group answered "yes" to the question, "Does your company contract with local Massachusetts farms to provide locally grown fruits and vegetables in season?" and provided further information as requested.<sup>148</sup> Performance Food Group stated that in the spring of 2011, it "developed a relationship" with Franklin County Community Development Corporation, located in Greenville, Massachusetts.<sup>149</sup> In terms of selling locally grown food, Performance Food Group noted that it had the opportunity to sell through its distribution system,<sup>150</sup> and to some schools in Massachusetts, locally grown produce that was processed and frozen at the Franklin County Community Development Corporation.<sup>151</sup> Neither of the remaining two bidders indicated that it currently obtains food from Massachusetts farms.<sup>152</sup> When asked whether the vendor will contract with Massachusetts farms to provide locally grown produce in the future, Performance Food Group answered "yes," and stated that in 2013 it would

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<sup>142</sup> MASS. OPERAT'L SERVS. DIV., REQUEST FOR RESPONSE: PRIME GROCER—GRO-30 22 (2012).

<sup>143</sup> The checklist states: "Agricultural Products Preference must be addressed as instructed in RFR," but there are no instructions in the RFR, only a summary of the law itself, namely that the State Purchasing Agent must grant a 10% price preference to products grown within the state. See MASS. OPERAT'L SERVS. DIV., PRIME GROCERS GRO30: REQUEST FOR RESPONSE CHECK LIST (2012).

<sup>144</sup> The checklist states: "Agricultural Products Preference must be addressed as instructed in RFR," but there are no instructions in the RFR, only a summary of the law itself, namely that the State Purchasing Agent must grant a 10% price preference to products grown within the state. See MASS. OPERAT'L SERVS. DIV., *supra* note 143; MASS. OPERAT'L SERVS. DIV., *supra* note 142, at 22; MASS. OPERAT'L SERVS. DIV., PRIME GROCERS GRO30: BIDDERS RESPONSE FORM QUESTIONNAIRE – SECTION 1 (2012).

<sup>145</sup> MASS. OPERAT'L SERVS. DIV., *supra* note 142, at 21–22.

<sup>146</sup> *Id.*

<sup>147</sup> See *Active Contracts – GRO30*, COMMBUYS, <https://www.commbuys.com> (click on the "Active Contracts" tab, select "Food Beverage and Tobacco Products" under "Show Contracts for Category," see vendors for GRO30 contract) (last visited Jan. 3, 2015).

<sup>148</sup> Performance Food Group, Nutritional Standard Executive Order 509 Bidder's Response Sheet – Section 3 (on file with author).

<sup>149</sup> Performance Food Group, Locally Grown and Processed Vegetables (on file with author).

<sup>150</sup> Having "the opportunity to sell" locally-grown food through its distribution system means that Performance Group sold (or could have sold) locally grown food processed by Franklin County Community Development Corporation.

<sup>151</sup> Performance Food Group, *supra* note 149.

<sup>152</sup> US Foods, Nutritional Standard Executive Order 509 Bidder's Response Sheet – Section 3 (on file with author); Reinhart Foodservice, Nutritional Standard Executive Order 509 Bidder's Response Sheet – Section 3 (on file with author).

pursue doing business with two Massachusetts organic farms: Atlas Farm in Deerfield, Massachusetts, and Red Fire Farm in Granby, Massachusetts.<sup>153</sup> US Foods also answered “yes,” and stated that the company is “willing to work with local Massachusetts farms to provide locally grown fruits and vegetables provided that those farms meet the standards of US Foods regarding traceability and meet the insurance requirements [US Foods] currently ha[s] in place.”<sup>154</sup> US Foods indicated that it is able to track the amount of inventory being sourced from local farms at no charge to the customer, as its online order system can identify local products based on the farm’s distance from company facilities.<sup>155</sup> It is possible that the system can track products based on state of origin as well, which would allow OSD to determine whether purchased foods have been grown in Massachusetts, rather than within a certain distance parameter. Reinhart answered “no,” it will not be contracting with Massachusetts farms, and provided no further explanation.<sup>156</sup>

Reinhart also answered “no” to the question, “Does your company comply with the Agricultural Products Preference requirement?” (i.e., Section 23B).<sup>157</sup> Both US Foods and Performance Food Group answered “yes,” that they do comply with the Agricultural Products Preference requirement, assumingly because they both expressed a willingness to work with Massachusetts farms in the future, although they do not currently have business relationships with any farms in Massachusetts.<sup>158</sup>

Despite having these basic questions, agencies have no data on how much local food they are purchasing through the prime grocer contract. Without this information, it is impossible to establish a baseline quantity of local food purchases by agencies. It is possible that agencies are not buying any locally sourced product. Collecting this information is critical in finding ways to help agencies increase the amount of local food they procure.

**Figure 5. Answers to Prime Grocer Questions regarding Local Food Procurement**

	<i>Does your company contract with local Massachusetts farms to provide locally grown fruits and vegetables in season?</i>	<i>Will your company contract with Massachusetts farms to provide locally grown produce in season?</i>	<i>Does your company comply with the Agricultural Products Preference Requirement?</i>
Performance Food Group	Yes	Yes	Yes
US Foods	No	Yes	Yes
Reinhart	No	No	No

<sup>153</sup> Performance Food Group, *supra* note 148; Performance Food Group, Organic Produce (on file with author).

<sup>154</sup> US Foods, Prime Grocers GRO30 Request for Response (RFR) Bidders Response Form Questionnaire – Section 1 (on file with author); US Foods, *supra* note 152.

<sup>155</sup> US Foods, *supra* note 154.

<sup>156</sup> Reinhart Foodservice, *supra* note 152.

<sup>157</sup> Reinhart Foodservice, Prime Grocers GRO30 Request for Response (RFR) Bidders Response Form Questionnaire – Section 1 (on file with author).

<sup>158</sup> US Foods, *supra* note 154; Reinhart Foodservice, *supra* note 157.

#### **4. Lack of Participation in Existing Procurement Support Programs**

Massachusetts has established two main procurement support programs to encourage agencies to purchase from identified groups of bidders. The SDP requires agencies to weigh bids from M/WBE more heavily to help these businesses secure agency contracts. The SBPP also encourages agencies to purchase from other small businesses that do not fall under the SDP. Both of these programs have a liaison in each Executive Department agency and each set benchmarks for agency purchasing through the program.

Despite the presence of these two programs, there is a dearth of participation by farmers and local food producers in these programs. Although participation in the SBPP has increased over the past couple years, there do not seem to be any farmers that are currently participating in the SBPP.<sup>159</sup> Additionally, there do not seem to be many farmers or food producers participating in the SDP. If the farmers meet the program criteria,<sup>160</sup> they should be able to participate in these programs.

#### **5. Prime Grocer Contract Requires Provision of Locally and Non-Locally Available Goods**

The list of goods provided by vendors under the prime grocer contract includes a variety of products, from potatoes and corn, to mangoes, bananas, and oranges. Because of the wide range of products included in the prime grocer contract, local producers cannot supply all of the food products requested; however, local producers can supply many of the goods included on the contract. Such a contract excludes local producers from bidding on the contract, though local producers could be successful in bidding for a contract requiring a more narrow range of produce that grows in Massachusetts.

## **V. RECOMMENDATIONS FOR INCREASING LOCAL FOOD PROCUREMENT BY MASSACHUSETTS AGENCIES**

Despite the many challenges to local producers laid out above, there are also many opportunities for progress. This section identifies and discusses a number of recommendations for how advocates can help agencies increase local food procurement in Massachusetts and how agencies can better comply with Section 23B. Some of these recommendations can be achieved without any legislative or policy actions, while others will require such action. These recommendations are not mutually exclusive and will be more effective if used in combination with one another.

<sup>159</sup> See *Business Directory*, *supra* note 89.

<sup>160</sup> *Small Business Purchasing Program (SBPP)*, MASS. OPERAT'L SERVS. DIV., <http://www.mass.gov/anf/budget-taxes-and-procurement/procurement-info-and-res/sell-to-the-state/sbpp/> (last visited Apr. 3, 2015); *Supplier Diversity Program (SDP)*, MASS. OPERAT'L SERVS. DIV., <http://www.mass.gov/anf/budget-taxes-and-procurement/procurement-info-and-res/procurement-prog-and-serv/sdo/sdp/> (last visited Apr. 3, 2015).

## 1. Create Educational Materials about Section 23B for Agencies and Farmers.

Compliance with Section 23B's local food preference requires state agencies to be aware of the law and requires Massachusetts farmers to submit successful bids for agency food contracts. There are a few relatively straightforward actions advocates can take to educate agencies and farmers about Section 23B, and foster relationships between the two groups to facilitate purchasing of local food.

First, the Massachusetts Farm to School Project and other advocates can provide basic informational materials on farm-to-institution procurement to state procurement officials and farmers. There has been some progress made on this front. The Massachusetts Farm to School Project collaborated with the Department of Public Health in 2012 to create a fact sheet to help state agencies (particularly their community programs) improve their access to locally grown produce.<sup>161</sup> However, more education on local food procurement will be beneficial to agency purchasers and Massachusetts producers. Unlike the SBPP and SDP, there is little information about Section 23B on OSD's website. These other programs are promoted by OSD, with fact sheets, directories of qualified bidders, and other materials to help agencies comply with the programs. The Massachusetts Farm to School Project could help OSD craft educational materials to promote awareness of Section 23B and how to meet Section 23B's requirements. For example, it is possible that agency procurement officials are not purchasing local food products because of certain assumptions that could be easily dispelled (e.g., that there are no farmers with capacity to sell to agencies). A pamphlet with basic information about local procurement could list farmers across the state that are capable of selling to institutions and could include other resources upon which the agencies could rely when purchasing locally.

A second tactic is to host networking and informational sessions, bringing together state procurement agents with local farmers and aggregators.<sup>162</sup> For example, the Illinois Department of Agriculture, in connection with one of its county farm bureaus, has hosted "Meet the Buyers" events, where local farmers could meet with state purchasers to discuss the agencies' food needs and contract requirements.<sup>163</sup> Agency officials would benefit from this type of event because they would be able to learn about the local bounty available for purchase. Farmers would benefit by meeting agency purchasers, understanding what their demands are, and learning about ways to increase their marketability when selling to institutional purchasers, such as by obtaining Good Agricultural Practices (GAP) certification.<sup>164</sup>

In order for education and outreach efforts to have the greatest effect, advocates should consider encouraging OSD to take the following recommendations:

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<sup>161</sup> MASS. DEP'T OF PUB. HEALTH, CONNECTING STATE AGENCIES TO LOCALLY GROWN FOODS (2012), *available at* <http://www.mass.gov/eohhs/docs/dph/com-health/nutrition-phys-activity/eo509-farm-to-agency.pdf> (last visited Apr. 10, 2015).

<sup>162</sup> Aggregators are businesses that purchase food products from a number of local farmers, which can then be sold to larger institutional purchasers. These aggregator businesses help small- and mid-scale farmers access larger markets that they could not supply on their own.

<sup>163</sup> Press Release, *Meet the Buyers Event*, ILL. DEP'T OF AGRIC. (Feb. 18, 2013), *available at* <http://www.agr.state.il.us/newsrels/r0218131.html> (last visited Dec. 30, 2014).

<sup>164</sup> *Id.*

➤ **Create a public directory of purchasing agents from each state agency.**

One of the difficulties in promoting local food procurement in Massachusetts is a lack of centralized, easily-accessible, and up-to-date information about the eighty-two agencies that purchase goods and services on behalf of the state. It is difficult for farmers to identify food procurers without undertaking an investigative analysis based on contacts listed on the COMMBUYS or the agency websites. Even with the contact information posted on COMMBUYS or the agency websites, farmers face a challenging time identifying the private individuals who are purchasing food at community homes and other agencies that have smaller food contracts.

A potential solution to reduce this information gap is to create an annual survey, distributed by the state, through which each state agency provides contact information for those employees at the agency—or individuals within each agency’s community sites—who have the authority to purchase food using state funds. For example, the Illinois Governor’s Office distributes this type of survey every year, which allows the Governor’s Office to collect this necessary contact information.<sup>165</sup> If Massachusetts develops a similar survey and records this information in an easy-to-find public database, it would facilitate many more connections between advocates, farmers, and procurement agents.

➤ **Create a directory of Massachusetts farms and aggregators interested in selling to state agencies.**

Even if an agency is interested in purchasing locally grown food, it is difficult to determine which farms have the capacity to meet procurement requirements and the desire to contract with the state. State agency procurement officers may not know about opportunities to work with aggregators and that working with an aggregator could improve the logistical coordination of getting larger quantities of local food to state agencies at good prices. A directory tracking farmer and aggregator interest would facilitate these connections, and the necessary information should not be difficult to collect. This directory could be developed with assistance from farm-to-institution advocates, such as the Massachusetts Farm to School Project, that have existing relationships with the farming community.

The directory could be developed as part of the Massachusetts Department of Agricultural Resources’ online “MassGrown Map.”<sup>166</sup> The MassGrown Map tracks all different types of farms, CSAs, farmers markets, and other agricultural activities, with a search function that allows the user to find farms based on geographic location or by type of agricultural product.<sup>167</sup> The map is currently designed for individual consumers, but some of these farms may also be capable of selling in larger quantities or may be willing to work with an aggregator to distribute their products to state agencies. The Massachusetts Department of Agricultural Resources could add another indicator/icon to the map that identifies which farms are willing and able to sell to Massachusetts agencies.

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<sup>165</sup> Telephone interview with Gary Tomlin, former member of Illinois’ Food, Farm & Jobs Council (Mar. 27, 2013).

<sup>166</sup> See *MassGrown Map*, MASS.GOV, <http://www.mass.gov/agr/massgrown/map.htm> (last visited Dec. 30, 2014).

<sup>167</sup> See *id.*

➤ ***Condition the receipt of state funds for community nutrition programs on attendance at mandatory agency procurement trainings or webinars.***

Many agencies, such as the Department of Youth Services, serve food through community sites where private companies that contract with the state agency have employees purchase food on behalf of the state agency (this is discussed in more detail in Section VI). OSD could adopt a policy requiring that as a condition for receiving state funds, any private entity that purchases food on behalf of these agencies must attend mandatory procurement trainings, either in person or through webinars. These mandatory trainings would ensure that all community sites are aware of Massachusetts agency procurement laws, including Section 23B's local preference requirement, E.O. 509, and E.O. 523, and that the sites receive materials outlining the basics of procuring locally grown food, including a directory of Massachusetts farms and aggregators once such a resource is created.

## **2. Establish a Tracking Mechanism and Reporting Requirement.**

One of the major barriers to increasing local food procurement in Massachusetts is that no mechanism currently exists to track how much local food is being purchased by state agencies. It is extremely difficult to measure progress in procurement without documentation of purchasing data, measurable baselines, and periodic updates.

A few states' local procurement laws include provisions for tracking state purchasing behavior or include a reporting requirement.<sup>168</sup> These states' existing provisions are a good starting point in encouraging agencies to procure more locally grown food products. For example, Illinois agencies are required to track their local food procurement yearly.<sup>169</sup> Illinois also requires its state food policy council, the Local Food, Farms, and Jobs Council, to assist state agencies in developing a system for tracking and reporting annually on local food purchases.<sup>170</sup> Kentucky requires all state agencies purchasing "agricultural products" to report annual purchasing to a legislative commission and the state Department of Agriculture by submitting a state-issued form describing the "types, quantities, and costs" of purchased products.<sup>171</sup>

In December 2013, New York adopted amendments to its local procurement law in an effort to increase documentation of procurement practices and thereby help agencies purchase more locally grown food.<sup>172</sup> Prior to the amendments, there was "little to no reporting, or evidence, that agencies or successful bidders [we]re making an effort to buy locally-grown foods, even when they [we]re available at a competitive price."<sup>173</sup> Pursuant to the amendments, the Commissioner of Purchasing and the

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<sup>168</sup> KY. REV. STAT. ANN. § 45A.645 (West 2012); 30 ILL. COMP. STAT. ANN. 595/10 (West 2012); N.Y. STATE FIN. LAW § 165(4) (McKinney 2013).

<sup>169</sup> 30 ILL. COMP. STAT. ANN. 595/10 (West 2012).

<sup>170</sup> *Id.*

<sup>171</sup> KY. REV. STAT. ANN. § 45A.645(1)(b) (West 2012).

<sup>172</sup> See S.B. 4061, 2013 Leg., 236th Sess. (N.Y. 2013).

<sup>173</sup> S.B. 4061, 2013 Leg., 236th Sess. (N.Y. 2013). The new law requires a high level of communication between New York's Department of Agriculture and Markets (NYSDAM) and state agencies when purchasing food. New York instructs NYSDAM to create a list of locally-grown food products, determining "those periods of time each year that those food products are

Commissioner of Agriculture and Markets must issue regulations that establish guidelines to assist agency purchasing of local food products, provide trainings on the guidelines, and establish a system for monitoring the implementation of the local food procurement law.<sup>174</sup> Each bidder must review a list of New York food products available to be purchased and report all food items procured under the contract.<sup>175</sup> This report must include the type, amount, and dollar value of products procured from New York; products that could be procured from New York, but were not; and products that cannot be procured from New York.<sup>176</sup> Finally, the Commissioner of Purchasing is required to submit an annual report documenting the implementation progress of the local food procurement law.<sup>177</sup>

Although Massachusetts does not currently have a tracking and reporting requirement for its local food purchasing, it does require tracking and reporting for other procurement programs. Agencies in Massachusetts are required to track and report compliance with the SDP and SBPP. Advocates should push Massachusetts to add a similar tracking and reporting requirement to its local food procurement law. State agencies should be required to track local food purchasing and submit annual reports documenting the amount of locally grown food purchased that year. A tracking and reporting requirement would focus attention on increasing locally grown food purchases, while increasing awareness of the need for agencies to alter existing food purchasing practices in order to make progress in this area.

### 3. Establish a Benchmark.

Advocates could also push Massachusetts to incorporate a benchmark requirement into Section 23B. A benchmark law allows a state to mandate a certain amount of the products purchased by state agencies to be grown or produced in-state (for example, a state might decide that 5%, 10%, or 20% of food products purchased by state agencies must be locally produced).<sup>178</sup> For example, Illinois has a benchmark as part of its local procurement law. The law states that it is “the goal of this State that 20% of all food and food products purchased by State agencies and State-owned facilities . . . and public universities, shall, by 2020, be local farm or food products.”<sup>179</sup> Massachusetts’ local procurement law does not contain a benchmark.

A benchmark requirement is a helpful tool to increase local food purchasing because it requires a certain amount of local food to be purchased (or a certain percentage of an agency’s budget to be spent on

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available in sufficient quantities for competitive purchasing.” State agencies must advise NYSDAM whenever they intend to solicit a bid for any foods on the list, and NYSDAM then determines whether those foods can be purchased from New York state businesses in sufficient quantities to meet agency demand. If agency demand can be met, the agency can insert a requirement for locally-grown food into the bid solicitation. All bidders must certify that food products offered through a contract are in conformity with the percentage of locally-grown food specified in the solicitation. If NYSDAM determines that agency demand for certain products cannot be met through the purchase of locally-grown food, then the agency issues a bid without a requirement for locally-grown food. *See* N.Y. STATE FIN. LAW § 165(4)(b)-(f) (McKinney 2013).

<sup>174</sup> N.Y. STATE FIN. LAW § 165(4)(d) (McKinney 2014).

<sup>175</sup> *Id.*

<sup>176</sup> N.Y. STATE FIN. LAW § 165(4)(d) (McKinney 2014).

<sup>177</sup> *Id.* at § 165(4)(g).

<sup>178</sup> *Id.* at § 165(4)(a).

<sup>179</sup> 30 ILL. COMP. STAT. ANN. 595/10 (West 2012).

local food). As in the tracking and reporting recommendation above, Massachusetts already has a precedent of using benchmarks in other procurement programs. The SDP and SBPP both set benchmarks for agency spending in those programs. For FY 2013, agencies set a benchmark to spend 6% of their discretionary budget on minority business enterprises, 12% of their discretionary budget on women business enterprises, and 2.5% of their discretionary budget on SBPP participants.<sup>180</sup> The benchmark requirement is paired with a tracking and reporting requirement, and so agency compliance with these benchmarks is reported in the SDO's annual report.<sup>181</sup>

Advocates such as the Massachusetts Farm to School Project could seek an amendment to Section 23B, setting a time-constrained goal for state agencies to ensure that a certain percentage of their total purchases are of locally grown or locally produced agricultural products. Modeled in part after Illinois' procurement goals statute,<sup>182</sup> the following proposed statutory language serves as a sample of what Massachusetts could do:

*It shall be the goal of the Commonwealth that 20 percent of all agricultural products purchased by the state purchasing agent responsible for procuring the products on behalf of a state agency shall, by 2020, be products grown or produced using products grown in the Commonwealth.*

Alternatively, advocates could push for a benchmark based on a percentage of an agency's budget, similar to what agencies do for the SDP and SBPP. Advocates could suggest agencies spend, for example, 7% of their food budgets on locally grown or produced food. This proposed benchmark should be coupled with the reporting requirement discussed above. This would allow the state to measure progress toward benchmark goals. States can also create interim goals (e.g. by 2017, 10% of all purchased agricultural products will be grown within Massachusetts) to ensure that agencies are on track to reach ultimate targets.

#### **4. Encourage Local Food Producer Enrollment in the Small Business Purchasing Program.**

Advocates could work to increase farmer participation in the SBPP. Under E.O. 523, state agencies must give "special consideration" in their procurement practices to small businesses enrolled in the SBPP.<sup>183</sup> Currently, there do not seem to be any farmers participating in the SBPP.<sup>184</sup> However, nothing in the SBPP would prohibit farmers from joining. In fact, including farmers as small businesses fits in well with the overall mission of the SBPP, which "recognizes the importance of Massachusetts' small businesses and the impact and challenges the latest recession has placed upon them," and strives to, among other

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<sup>180</sup> MASS. OPERAT'L SERVS. DIV., *supra* note 81, at 16.

<sup>181</sup> *Id.*

<sup>182</sup> 30 ILL. COMP. STAT. ANN. 595/10 (West 2012).

<sup>183</sup> Mass. Exec. Order No. 523, *supra* note 23.

<sup>184</sup> Preliminary search of COMMBUY's business directory did not reveal any farms or agricultural businesses designated as SBPP participants. See *Business Directory*, *supra* note 89.

things, “partner with Massachusetts small businesses to strengthen our economy, innovate new job creation, and become a source of community empowerment and economic revitalization.”<sup>185</sup>

To encourage participation by local farmers in the SBPP, advocates could create materials highlighting the reasons why farmers should participate in these programs. Subscription to COMMBUYS is free of charge, and SBPP-participating entities are given priority on the COMMBUYS business directory by being listed above non-SBPP participating entities.<sup>186</sup> Public purchasers use COMMBUYS when looking for vendors with whom to do business, and therefore participation in the SBPP could potentially lead to increased exposure and business for local farmers.<sup>187</sup> Participation in the program would give local farmers a competitive advantage over out-of-state businesses to win awards for small procurements (those under \$150,000), as Massachusetts agencies are required under current SBPP policy to give an absolute preference to SBPP participants who meet contract requirements.<sup>188</sup> Thus, the SBPP seems to offer significant advantages for farmers who participate in it, with few obstacles.

## **5. Encourage Local Food Producer Enrollment in the Supplier Diversity Program.**

Advocates could also work to increase eligible farmer participation in the SDP. Procurement teams are required to dedicate at least 10% of response evaluation points to weighing the relative strength of each bidder’s SDP plan.<sup>189</sup> This is meant to give bidders an incentive to partner with SDP businesses. There is a directory of certified SDP businesses bidders can use to find SDP partners.<sup>190</sup> Currently there are few farmers participating in the SDP.<sup>191</sup> For farms that are minority-owned or women-owned, the SDP could be another way to increase their access to Massachusetts’ institutional food markets.

## **6. Create a Massachusetts-Grown Agricultural Products Purchasing Program.**

As discussed throughout this report, Section 23B’s local preference requirement has not been particularly effective in altering state agency purchasing behavior, in part because it lacks benchmark-setting, tracking, reporting, and other enforcement mechanisms. Yet, the law still stands as an expression of the Massachusetts legislature’s desire to increase procurement of locally grown food. Advocates could use Section 23B to garner support for a new policy or executive order that could establish a Massachusetts-grown Agricultural Products Purchasing Program (MAPPP).

With a design similar to E.O. 523’s SBPP, MAPPP could direct all state agencies to give “special consideration” in their food procurement practices to Massachusetts farms or farm aggregators who enroll in the program. OSD could be tasked with managing, monitoring, and enforcing the requirements

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<sup>185</sup> Mass. Exec. Order No. 523, *supra* note 23.

<sup>186</sup> MASS. OPERAT’L SERVS. DIV., SMALL BUSINESS PURCHASING PROGRAM FACT SHEET (undated), *available at* <http://www.mass.gov/anf/docs/osd/sbpp/sbppinfosheet14.pdf> (last visited Dec. 30, 2014).

<sup>187</sup> *Id.*

<sup>188</sup> MASS. OPERAT’L SERVS. DIV. PROCUREMENT INFO. CTR., PROCUREMENT OVERVIEW 21 (2013), *available at* <http://www.mass.gov/anf/budget-taxes-and-procurement/oversight-agencies/osd/procurement-information-center.html> (last visited Dec. 30, 2014).

<sup>189</sup> *Supplier Diversity Program*, *supra* note 92, at 1.

<sup>190</sup> *Directory of Certified Businesses Search*, *supra* note 97.

<sup>191</sup> *Id.*

of the program; OSD could also provide technical assistance, outreach, and procurement training to local farmers and aggregators. Massachusetts farmers and aggregators could determine eligibility and enroll in the MAPPP through COMMBUYS, and OSD could have the authority to audit these enrollments and assess penalties for fraudulent claims.

To measure the success of the program, OSD could be required to track each state agency's spending on food supplied by MAPPP participants and establish annual benchmarks for the amount of future MAPPP purchases, much like the SBPP. To assist OSD in tracking MAPPP-related expenditures, agencies would designate "Massachusetts-grown" purchases in the Massachusetts online accounting system. At the end of the year, OSD could prepare an annual report discussing the program's effectiveness.

In connection with the new policy, OSD could consider adopting a policy requiring that state agencies award small procurements—those valued between \$10,000 and \$150,000—to eligible MAPPP participants, as it does for purchases under the SBPP.<sup>192</sup>

Another benefit of establishing a MAPPP is that the program provides a solution to the tracking issues currently faced by OSD and other agencies. Most agencies purchase food through vendors, and cannot readily determine whether the foods purchased through these vendors originated on a farm in Massachusetts or from a farm outside of the state. Under MAPPP, agencies would already know whether a vendor sources a significant amount of food from local farms based on whether or not the vendor has enrolled in the MAPPP. Enrollment in MAPPP would be voluntary, but the program would incentivize Massachusetts farms to enroll because it would grant Massachusetts farms preferential treatment in state procurements.

This comprehensive policy will likely have a significant impact on state agency purchasing as it would be nearly identical to E.O. 523's SBPP, which within two years saw a doubling of state procurement through the SBPP, reaching \$121.8 million.<sup>193</sup> Until a MAPPP policy is established as discussed above, advocates can encourage farmers to enroll in the SBPP to help increase the farmers' access to state procurement contracts.

## **7. Encourage OSD to Divide the Prime Grocer Contract into Multiple Contracts.**

The prime grocer contract requires bidders to supply a wide range of food that includes food that can be grown locally and food that cannot be grown locally. This restricts Massachusetts farmers' ability to bid on the prime grocer contract (as a vendor or subvendor). OSD could be encouraged to split the prime grocer contract into smaller contracts to address this issue. There could be one contract that contains only food that cannot be grown locally (for example, bananas, avocados, mangoes, pineapple, etc). The other contract would contain food that could be grown locally. With these separate contracts, local

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<sup>192</sup> *OSD Policy Guidance 14-01*, *supra* note 62, at 2.

<sup>193</sup> The Small Business Purchasing Program was established in 2010. In FY2011, OSD reported that expenditures through the program totaled \$59.7 million; by FY2012, that figure had grown \$121.8 million. *See MASS. OPERAT'L SERVS. DIV.*, *supra* note 64, at 43.

farmers could bid to be a vendor on the prime grocer contract supplying locally available goods. In the meantime, farmers could work with the other major vendors to be a subvendor on the prime grocer contract (like the companies listed in Appendix F: July 2014 Food Order Guides).

## **8. Split Agency-Specific Food Contracts into Multiple Contracts.**

As mentioned earlier and discussed in more detail below, some Massachusetts agencies create separate agency-specific contracts to procure food for their clients' needs. However, similar to the prime grocer contract, these contracts require bidders to supply both locally grown and non-locally grown food items. To illustrate, the majority of food items specified in the DOC's fresh produce contract are items that could be supplied locally. However, the presence of other items such as bananas and oranges precludes the participation of local farmers or aggregators in the bidding process, as they cannot supply all foods requested under the contract.<sup>194</sup> DOC and other agencies that currently list all produce together under one contract could instead split the contract into two separate contracts: one contract for food items that can be grown locally, and the other contract for food items that cannot be grown locally. Farmers and aggregators of Massachusetts-grown products would then be eligible to bid on the contract for locally grown food items.

## **9. Add a Preference for Regional Food Products to Section 23B.**

It is possible that one reason agencies do not purchase local food is because they assume there is not a sufficient supply of local food to meet the agency's food needs. One way to address this supply issue is to extend a preference to a broader geographic range. Because Massachusetts is located so close to other New England states with farms that could supply Massachusetts agencies, establishing a preference for food from New England might encourage agencies to purchase food from across New England.

Although Massachusetts' local food procurement law is intended to support agricultural producers within the state, a regional approach to food procurement in New England makes sense for a number of reasons. First, because New England is such a small area, much of the food that comes from the other New England states can still be considered "local." Second, the economies of the New England states are connected and strengthening the agricultural economy throughout New England will benefit the region as a whole. Third, expanding the range for local food products to include the other New England states will increase the supply of locally grown and produced food. Not only are there more farms from which to purchase food directly, but aggregators would have a wider supply from which to draw, which could make them more competitive in the bidding process. Finally, by providing a preference for regional food, other New England states may be incentivized to give a preference for Massachusetts products for farms that are near the borders.

There is one example of a procurement law that incorporates a regional food preference. Ohio is the only state that provides a preference for both products produced or mined in Ohio as well as in a border

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<sup>194</sup> See Request for Response 10-9043-PRODUCE, Don Staffiere, Deputy Dir., Dep't of Corr. (Sept. 25, 2009).

state.<sup>195</sup> Ohio- and border state- products receive a 5% price preference.<sup>196</sup> Following Ohio's lead, advocates in Massachusetts can push for adding a regional preference to Section 23B. Food products from Massachusetts could still receive the highest preference (at 10%), while food products procured from other New England states could receive, say a 5% or 7% price preference.

## VI. SPECIFIC AGENCY PURCHASING INFORMATION AND RECOMMENDATIONS

The previous section identified and discussed challenges to and recommendations for increasing local food procurement across all Massachusetts state agencies. Recall that agencies are required to purchase food through existing statewide contracts (e.g., the prime grocer contract), unless granted an exemption from OSD.<sup>197</sup> Each agency has individualized food needs and its own system for purchasing, preparing, and serving food, and therefore, many state agencies have their own smaller food contracts that they manage. To better assess the challenges and potential solutions for promoting procurement of Massachusetts-grown food, it is essential to understand how the nine agencies that serve food to dependent clients operate, to whom they serve food, the volume and frequency of food purchasing, and whether purchasing is centralized or conducted through individual branches.<sup>198</sup>

The nine agencies that serve food to dependent clients are:<sup>199</sup> Department of Children and Families; Department of Correction; Department of Developmental Services; Executive Office of Elder Affairs; Department of Mental Health; Department of Public Health; the sheriffs' offices; Department of Veterans' Services;<sup>200</sup> and Department of Youth Services. Collectively, these nine agencies serve forty-two million meals annually and represent the largest agency food purchasers.<sup>201</sup> Although the Department of Elementary and Secondary Education (DESE) is a significant purchaser of food, different rules pertain to school food purchasing, and purchases are made by individual school districts, rather than DESE.<sup>202</sup> Because of these significant differences in purchasing requirements and practices, procurement of locally grown food by schools is outside the scope of this report.

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<sup>195</sup> OHIO ADMIN. CODE 123:5-1-06 (2012).

<sup>196</sup> *Id.*

<sup>197</sup> MASS. OPERAT'L SERVS. DIV., *supra* note 17, at 19.

<sup>198</sup> Massachusetts' executive branch departments include eighty-two agencies (for a full list, see Appendix D: Massachusetts Executive Agencies), each subject to the local agricultural products preference law in Section 23B. *Id.* at 3.

<sup>199</sup> BAYERL, *supra* note 11, at 2.

<sup>200</sup> This includes the Soldiers' Homes in Chelsea and Holyoke.

<sup>201</sup> BAYERL, *supra* note 11, at 2.

<sup>202</sup> For a discussion on state college and university procurement of local agricultural products, see ABRAMS, ET AL., *supra* note 10.

**Figure 6. Massachusetts State Agency Food Purchasing Overview<sup>203</sup>**

Agency	No. of Sites	No. of Clients Served per Day	No. of Meals Served per Day	Dollars Spent on Prime Grocer (GRO-14), FY 2012 <sup>204</sup>
Department of Correction	18 <sup>205</sup>	11,000 <sup>a</sup>	33,000	\$9,563,000
Department of Developmental Services	2 residential facilities; <sup>206</sup> 200 group homes; 2,700-3,000 community sites	9,000-10,000	30,000 <sup>a</sup>	\$250,000
Executive Office of Elder Affairs	27 programs serving food through 400 community sites and home deliveries <sup>207</sup>	unknown	23,000 <sup>208</sup>	\$0
Department of Mental Health	6 hospitals/ 29 local sites <sup>209</sup>	3,887	11,661 <sup>a</sup>	\$1,136,000
Department of Youth Services	56 residential facilities; 26 community programs	2,000-6,700	2,000+ <sup>b</sup>	\$1,840,000
Sheriffs' Offices	14	14,000 <sup>a</sup>	42,000 <sup>210</sup>	\$2,649,000
Department of Public Health	4	800	2,400 <sup>a</sup>	\$262
Department of Veterans' Services	6 shelters; 1 hospital	467 <sup>a</sup>	1,400	\$1,757,000
Department of Children and Families	1	46	16,376	\$13,000

<sup>a</sup> Assuming three meals per day

<sup>b</sup> Frequency of meals unknown

<sup>203</sup> Unless otherwise noted, data was obtained through the Massachusetts Department of Public Health E.O. 509 Agency Survey. See BAYERL, *supra* note 11, at 2.

<sup>204</sup> See OPERAT'L SERVS. DIV., *supra* note 118.

<sup>205</sup> MASS. DEP'T OF CORRECTION, STRATEGIC PLAN: 2012-2017 7 (2012), available at <http://www.mass.gov/eopss/docs/doc/research-reports/strategicplan-03-12-12.pdf> (last visited Jan. 5, 2015).

<sup>206</sup> DDS was in the process of restructuring its facilities to close four of its six larger residential facilities, so that patients can receive the least restrictive care and the state can realize cost savings. Facilities at Fernald, Monson, Templeton, and Glavin were to be closed by 2013, with individuals being transferred to community homes or the two remaining large facilities, Hogan or Wrentham. See MASS. DEP'T OF DEVELT SERVS., DMR COMMUNITY SERVICES EXPANSION AND FACILITIES RESTRUCTURING PLAN 1 (2009), available at <http://www.mass.gov/eohhs/docs/dmr/facilities-restructuring-plan.pdf> (last visited Jan. 5, 2015). However, the DDS website still includes Fernald and Templeton under its list of facilities. *DDS Regional, Area Offices, and Facilities*, MASS. DEP'T OF DEVELT SERVS., <http://www.mass.gov/eohhs/consumer/disability-services/services-by-type/intellectual-disability/support/dds-regional-area-offices-and-facilities.html> (last visited Jan. 5, 2015).

<sup>207</sup> *Id.*

<sup>208</sup> Rough estimation, based on the 8.5 million meals served each year. See *Elderly Nutrition Program Overview*, MASS. EXEC. OFFICE OF ELDER AFFAIRS, <http://www.mass.gov/elders/meals-nutrition/elderly-nutrition-program-overview.html> (last visited Jan. 5, 2015).

<sup>209</sup> See MASS. DEP'T OF MENTAL HEALTH, SFY2012-2014 STATE MENTAL HEALTH PLAN 26-27 (2011), available at <http://www.mass.gov/eohhs/docs/dmh/state-mental-health-plan-2012.pdf> (last visited Jan. 5, 2015).

<sup>210</sup> Data from Bayerl presentation indicates that the sheriffs' offices serve 42,000 clients per year; however it is more likely that there were 42,000 meals served, and therefore this figure has been included in the annual meals column. BAYERL, *supra* note 11, at 2. According to the most recent Bureau of Justice Statistics' Census of Jail Facilities, Massachusetts had only 13,214 inmates in local jails in 2006, and therefore presumably served approximately 40,000 meals that year. See James Stephan & Georgette Walsh, *Census of Jail Facilities, 2006*, BUREAU OF JUSTICE STATISTICS 17 (2011), available at <http://bjs.gov/content/pub/pdf/cjf06.pdf> (last visited Jan. 5, 2015).

This section provides an overview of these nine agencies, along with a discussion of potential opportunities to increase local food procurement, highlighting the barriers and drawbacks specific to each agency. Some of these recommendations are short-term strategies meant to serve as stop-gaps until stronger laws are in place, while others are steps in creating better procurement practices that enhance the agency's ability to purchase locally grown food. In this section, the recommendations for each agency directly follow the background and discussion of each agency.

## **A. Department of Correction**

The Department of Correction (DOC) is responsible for the care and custody of inmates sentenced to state prison, and of persons under mental health commitments, civil commitments due to alcohol and substance abuse, sexually dangerous person commitments, and certain pre-trial detainees, sentenced county inmates, and federal inmates.<sup>211</sup> DOC operates eighteen correctional facilities, located in eight different communities in eastern and central Massachusetts, including two maximum-security prisons, nine medium-security prisons, six minimum-security prisons, and five pre-release centers.<sup>212</sup> There are three fiscal units within DOC (located in Milford, Concord, and Bridgewater); each of which is responsible for the budgets and purchasing for one or more DOC facilities.<sup>213</sup>

In total, DOC serves approximately 33,000 meals each day, at a per-inmate cost of \$3.07 per day (this is the total for three meals a day).<sup>214</sup> Food must be served according to the American Academy of Nutrition and Dietetics nutritional guidelines, including a variety of alternative menus suited for religious and therapeutic diet needs.<sup>215</sup> DOC's consultant dietitian develops the meals.<sup>216</sup> Cost constraints, coupled with a minimum calorie requirement, limits flexibility in the content of food purchases.<sup>217</sup> DOC's food expenses—which totaled \$14.6 million in 2011<sup>218</sup>—are generally divided between the statewide prime grocer contract (65%), milk and dairy contract (15%), and baked goods contract (5%), as well as its own fresh produce contract (15%).<sup>219</sup> In 2012, DOC's expense on the prime grocer contract alone amounted to over \$9.5 million. These numbers qualify DOC as the largest purchaser on the prime grocer contract.<sup>220</sup>

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<sup>211</sup> MASS. DEP'T OF CORRECTION, *supra* note 205, at 11–12.

<sup>212</sup> Some pre-release centers share facilities with prisons. *Id.* at 7, 9.

<sup>213</sup> See MASS. DEP'T OF CORRECTION, REQUEST FOR RESPONSE # 10-9043-PRODUCE 11 (2009), available at <https://www.commbuys.com> (click on the "Contract & Bid Search" link, select "Contracts/Blankets," input "C118818-vCurrent" into Contract/Blanket # box and click "Find It," click the "C118818-vCurrent" link, in the list of agency attachments click "RFRPRODUCE") (last visited Jan. 5, 2015).

<sup>214</sup> Telephone Interview with Chris Gendreau, Director of Food Service, Milford, MA, Mass. Dep't of Correction (Nov. 13, 2012).

<sup>215</sup> *Id.* See also 103 MASS. CODE REGS. 761.06 (2013).

<sup>216</sup> Gendreau, *supra* note 214. See also 103 MASS. CODE REGS. 761.06 (2013).

<sup>217</sup> Gendreau, *supra* note 214.

<sup>218</sup> MASS. DEP'T OF CORRECTION, 2011 ANNUAL REPORT 46 (2012), available at <http://www.mass.gov/eopss/docs/doc/annual-report-2011-final-08-01-12.pdf> (last visited Jan. 5, 2015).

<sup>219</sup> Gendreau, *supra* note 214.

<sup>220</sup> See MASS. OPERAT'L SERVS. DIV., *supra* note 118.

Under its fresh produce contract, which accounts for approximately 15% of food expenditures (roughly \$900,000 in FY 2012),<sup>221</sup> DOC has authorized four vendors<sup>222</sup> to supply fruits and vegetables to its various facilities.<sup>223</sup> In addition to complying with delivery security requirements, vendors must carry liability insurance of up to \$300,000.<sup>224</sup> DOC designed the RFR for the DOC-specific fresh produce contract as a “rolling enrollment” solicitation, meaning that additional qualifying vendors can bid and be added at any point during the fresh produce contract.<sup>225</sup> In terms of compliance with Section 23B, there is evidence that at least three of the four vendors currently under contract—Greg’s Packing/Vega Distributors, J.W. Lopes, and Maine’s Paper & Food Services—make an effort to source locally-grown produce when possible, although precise figures regarding local purchasing are unknown.<sup>226</sup>

In addition, DOC contracted with a food service management company, Trinity Services, to provide food to inmates at four locations—MCI Framingham, South Middlesex Correctional Center, Pondville Correctional Center, and Boston Pre-Release Center—beginning in 2013.<sup>227</sup> Under the terms of the RFR, the food service management company will provide all food and beverages to these four locations—in effect, outsourcing food procurement to a third party.<sup>228</sup> The RFR states that the food service management company may order food through the prime grocer contract if desired.<sup>229</sup> DOC retains the right to review and compare prices of food ordered by the food service management company to prices of those foods available through the prime grocer contract, and adjust reimbursed food costs to reflect savings available under the prime grocer contract.<sup>230</sup>

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<sup>221</sup> Email from Don Staffiere, Acting Fiscal Director, Mass. Dep’t of Correction (April 18, 2013) (on file with author).

<sup>222</sup> MASS. DEP’T OF CORRECTION, C118818-vCURRENT\_OD.XLSX, available at <https://www.commbuys.com> (click on the “Contract & Bid Search” link, select “Contracts/Blankets,” input “C118818-vCurrent” into Contract/Blanket # box and click “Find It,” click the “C118818-vCurrent” link, in the list of agency attachments click “C118818-vCurrent\_OD.xlsx” and view “BlanketDistributosAllOther” tab) (last visited Jan. 5, 2015).

<sup>223</sup> The DOC’s contract calls for many of the same vegetables, although at much larger quantities: apples, bananas, cabbage, carrots, celery, lettuce, onions, peppers, potatoes, tomatoes, salad mix and oranges. See MASS. DEP’T OF CORRECTION, *supra* note 213, at 30–31.

<sup>224</sup> See *id.* at 13. All delivery personnel must clear background checks, and all vehicles and equipment must be checked, searched and approved each time the vendor enters or leaves a DOC facility. Jeans cannot be worn inside the facility, and tobacco cannot be brought in either. In addition, vendors must keep all DOC records secure and confidential.

<sup>225</sup> See *id.* at 3.

<sup>226</sup> J.W. Lopes makes an effort to support local farmers “in growing season.” See *Products*, J.W. LOPES, <http://jwlopes.com/products.html> (last visited Jan. 5, 2015). Maine’s Paper & Food Services, Inc. sources in-season produce from within a 100-mile radius of its headquarters in upstate New York. The company also electronically tracks its produce. *Local Produce*, MAINE’S PRODUCE EXPRESS, <http://www.maines.net/produce-express/products/local-produce> (last visited Jan. 5, 2015).

<sup>227</sup> See MASS. DEP’T OF CORRECTION, C146890-vCURRENT\_OD.XLSX, available at <https://www.commbuys.com> (click on the “Contract & Bid Search” link, select “Contracts/Blankets,” input “C146890-vCurrent” into Contract/Blanket # box and click “Find It,” click the “C146890-vCurrent” link, in the list of agency attachments click “C146890-vCurrent\_OD.xlsx” and view “BlanketDistributosAllOther” tab) (last visited Jan. 5, 2015); MASS. DEP’T OF CORRECTION, REQUEST FOR RESPONSE, FOOD SERVICES, RFR #13-DOC-FOOD-J56, 7–8, available at [www.commbuys.com](http://www.commbuys.com) (click on the “Contract & Bid Search” link, select “Bids,” input “S134379-vCurrent” into Bid # box and click “Find It,” click the “S134379-vCurrent” link, in the list of agency attachments click “13-DOC-Food-J56”) (last visited Jan. 5, 2015).

<sup>228</sup> MASS. DEP’T OF CORRECTION, REQUEST FOR RESPONSE, *supra* note 227.

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

## ***Recommendations for the Department of Correction***

DOC is a high-volume food purchaser, and spends almost \$15 million annually to serve approximately twelve million meals.<sup>231</sup> Its eighteen facilities are located within only eight communities, which provides a relatively centralized delivery route for food products (compared to other agencies that have hundreds or thousands of community sites where food is served).

There is evidence that DOC may already purchase some locally grown produce through its fresh produce contract. One short-term strategy to increase local food purchases is for advocates to reach out to the four vendors authorized under DOC's own fresh produce contract (not the same vendors as the statewide prime grocer contract), connecting them to additional farms in Massachusetts. The success of this strategy is, of course, contingent on the vendors' willingness to contract with local farms, but two of the three vendors have stated that they prioritize local food purchases when feasible.

Another potential strategy is to encourage a local farm or an aggregator of local produce to bid on the fresh produce contract. As mentioned above, DOC solicits bids for fresh produce on a "rolling enrollment" basis,<sup>232</sup> and therefore a local farmer or vendor could bid on the contract immediately. Individual small-scale farmers, however, may find it difficult or impossible to supply the large amount of produce required on a monthly basis, or to satisfy the contract's \$300,000 minimum liability insurance requirement.<sup>233</sup>

In addition, certain specified food items in the contracts are not grown in Massachusetts, such as bananas and oranges,<sup>234</sup> this is another issue preventing local farmers from bidding on the contract. One solution to overcome these barriers is to request that DOC provide a split contract and purchase seasonal produce from Massachusetts farmers or aggregators when seasonally appropriate. DOC could also work with the food service management company serving these four locations to source more local produce.

## ***B. Department of Developmental Services***

The Department of Developmental Services (DDS), formerly known as the Department of Mental Retardation,<sup>235</sup> provides specialized services and support to 32,000 individuals and children with intellectual and developmental disabilities.<sup>236</sup> Programs and services are administered through 2,700-3,000 community sites, 200 group homes and seven larger residential facilities, and include day

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<sup>231</sup> MASS. DEP'T OF CORRECTION, *supra* note 218; BAYERL, *supra* note 11, at 2.

<sup>232</sup> See MASS. DEP'T OF CORRECTION, *supra* note 213, at 3.

<sup>233</sup> See *id.* at 9, 13.

<sup>234</sup> See *id.* at 30–31.

<sup>235</sup> See Mass. Exec. Order No. 521 (Mar. 31, 2010), *available at*

<http://www.mass.gov/governor/legislationexecorder/executiveorder/executive-order-no-521.html> (last visited Jan. 5, 2015).

<sup>236</sup> *About the Department*, DEP'T OF DEVTL SERVS., <http://www.mass.gov/eohhs/consumer/disability-services/services-by-type/intellectual-disability/newsroom/about/> (last visited Jan. 5, 2015).

supports, employment supports, residential supports, family supports, respite, and transportation.<sup>237</sup> Its two larger facilities, Wrentham Developmental Center and Hogan Regional Center, accommodate approximately 350 and 150 individuals, respectively.<sup>238</sup>

DDS serves meals to approximately 9,000-10,000 clients each day.<sup>239</sup> In 2012, DDS purchased \$250,000 worth of goods through the prime grocer contract (representing 1.4% of total spent on the contract).<sup>240</sup> Based on an understanding of the agency and on its low spending through the prime grocer contract, it is likely that DDS contracts with food service management companies to purchase and prepare food for the facilities at Wrentham and Hogan. Further research is needed to determine if this is the case, as no contracts for these services are currently posted on the COMMBUYS website.

Instead of establishing a department-wide contract for the food needs of its numerous group homes, DDS authorizes staff to purchase groceries from grocery stores and other retail establishments within their communities.<sup>241</sup> DDS prequalifies retail vendors so that DDS-designated “shoppers” may purchase food in those stores.<sup>242</sup> Participants must agree to bill DDS directly for purchases, rather than charge the shopper, and must provide the lowest or best current pricing for items, without adding a service charge.<sup>243</sup> This procurement method allows individuals residing in these homes to participate in food selection, which is an important component of DDS’ mission to promote self-determination and create opportunities for intellectually disabled individuals to interact with their community in meaningful ways.<sup>244</sup>

### ***Recommendations for the Department of Developmental Services***

DDS has become increasingly decentralized. Its 2009 restructuring plan called for the closure of four of its six large residential facilities and the transfer of most residents to smaller group homes or community sites by 2013.<sup>245</sup> Despite the shift away from larger facilities, Wrentham and Hogan will remain in operation. These two particular facilities present opportunities for large-quantity purchases of Massachusetts-grown food. Local food advocates could work with DDS to create a fresh produce contract, similar to the contract utilized by DOC and the Department of Children and Families. A

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<sup>237</sup> MASS. DEP’T OF DEVTL SERVS., REQUEST FOR RESPONSE: HOUSEHOLD SUPPLIES STATE OPERATED HOMES AND FACILITIES 2 (2009), available at <https://www.commbuys.com> (click on the “Contract & Bid Search” link, select “Bids,” input “S108601-vCurrent” into Bid # box and click “Find It,” click the “S108601-vCurrent” link, in the list of file attachments click “2022”) (last visited Jan. 5, 2015); *DDS-Area Office Locator* MASS. DEP’T OF DEVTL SERVS., <http://www.dmr.state.ma.us/frmMain.asp> (last visited Jan. 5, 2015); BAYERL, *supra* note 11, at 2. DDS was in the process of restructuring its facilities to close four of its six larger residential facilities, so that patients can receive the least restrictive care and the state can realize cost savings. Facilities at Fernald, Monson, Templeton, and Glavin were to be closed by 2013, with individuals being transferred to community homes or the two remaining large facilities, Hogan or Wrentham. See MASS. DEP’T OF DEVTL SERVS., *supra* note 206, at 1. However, the DDS website still includes Fernald and Templeton under its list of facilities. *DDS Regional, Area Offices, and Facilities*, *supra* note 206.

<sup>238</sup> See MASS. DEP’T OF DEVTL SERVS., *supra* note 206, at 6.

<sup>239</sup> See BAYERL, *supra* note 11, at 2.

<sup>240</sup> See OPERAT’L SERVS. DIV., *supra* note 118.

<sup>241</sup> MASS. DEP’T OF DEVTL SERVS., *supra* note 237, at 3.

<sup>242</sup> *Id.*

<sup>243</sup> *Id.* at 12.

<sup>244</sup> *Id.* at 1.

<sup>245</sup> See MASS. DEP’T OF DEVTL SERVS., *supra* note 206, at 16.

dedicated DDS produce contract to serve Wrentham and Hogan facilities would facilitate local procurement of fresh produce, as nearby farms or aggregators would not have to provide extremely large quantities of produce or additional packaged goods as requested under the existing statewide prime grocer contract. As the two facilities are located in different areas of the state, the contract solicitation could be drafted to authorize multiple vendors, and to allow vendors to provide goods to only one location, which would minimize delivery distance and maximize opportunity for participation by small farmers.

Further research is needed to determine whether Wrentham and Hogan contract with food service management companies to provide food to clients. If these two facilities do contract with food service management companies, then it is important to determine whether DDS retains discretion over food purchasing decisions. If these food service management companies purchase food independently of DDS, local food advocates could reach out to the companies and encourage them to create smaller contracts with local farms in their capacity as independent decision makers. DDS could also insert language into future contracts with food service management companies stating that DDS retains control over certain food purchasing decisions, such as whether food will be purchased from Massachusetts farms.

With regard to the 200 group homes that purchase food from grocery stores within their communities, advocates could increase local food purchases by conducting outreach and educational sessions to connect the homes to local farmers markets, farm stands, and community-supported agriculture operations (CSAs). Community vendors must be preapproved by DDS and must agree to bill DDS directly for these purchases,<sup>246</sup> which is a potential barrier because some farmers may not want to wait to receive payment from DDS.

### ***C. Executive Office of Elder Affairs***

The Executive Office of Elder Affairs (Elder Affairs) provides programs and services to protect the health, wellbeing, independence, and dignity of elderly persons.<sup>247</sup> Elder Affairs administers the Nutrition Program for the Elderly, which consists of twenty-seven regional nutrition program offices throughout Massachusetts that serve more than 8.5 million meals each year to qualifying persons sixty years of age or older.<sup>248</sup> Approximately 70% of these meals are delivered to seniors at home, with the remaining 30% of meals provided at 400 congregate meal sites.<sup>249</sup> Each meal contains at least 1/3 of the current daily recommended dietary allowance of nutrients for elderly persons.<sup>250</sup> Apart from meals, the program also

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<sup>246</sup> See MASS. DEP'T OF DEVTL SERVS., *supra* note 237, at 2-3.

<sup>247</sup> MASS. EXEC. OFFICE OF ELDER AFFAIRS, STATE PLAN ON AGING: FEDERAL FISCAL YEARS 2010-2013 1 (2010), *available at* <http://www.mass.gov/elders/docs/state-plan-on-aging.pdf> (last visited Jan. 5, 2015).

<sup>248</sup> *Elderly Nutrition Program Overview*, *supra* note 208.

<sup>249</sup> MASS. EXEC. OFFICE OF ELDER AFFAIRS, RFR – ELD – 2007-4 AMENDED: USDA COMMODITY PROCESSING BEEF, PORK AND FRUIT 9 (2012), *available at* <https://www.commbuys.com> (click on the “Contract & Bid Search” link, select “Bids,” input “S110676-vCurrent” into Bid # box and click “Find It,” click the “S110676-vCurrent” link, in the list of file attachments click “BEEF\_PORK\_AND\_FRUIT\_RFR\_amended”) (last visited Jan. 5, 2015).

<sup>250</sup> *Elderly Nutrition Program Overview*, *supra* note 208.

provides nutrition screening, assessment, education, and counseling to help elders maintain healthy, nutritious diets.<sup>251</sup>

Nearly all of the twenty-seven nutrition programs contract with food service management companies to prepare meals for group sites and home delivery.<sup>252</sup> The remaining nutrition programs prepare meals themselves at kitchens they lease or own, or at shared kitchens owned by another governmental entity, such as a local school district.<sup>253</sup> In total, Elder Affairs prepares meals at eighty-three sites.<sup>254</sup> Meals are funded through a combination of federal and state monies as well as donations from participating seniors.<sup>255</sup> Elder Affairs purchases approximately \$2 million worth of commodity foods from the USDA, such as meat, poultry, fish, fruits and vegetables, grain, oil, peanuts, and dairy products.<sup>256</sup>

### ***Recommendations for the Executive Office of Elder Affairs***

Elder Affairs serves a large number of meals per day (23,000), prepared across eighty-three decentralized sites. A centralized department within Elder Affairs pre-selects food vendors by conducting a competitive bidding process, and then the twenty-seven individual nutrition programs order food products based on available inventory from these vendors.<sup>257</sup> Elder Affairs can work with the food service management company to increase local food purchasing, and in a future RFR could give more weight to bids that source local food.

## ***D. Department of Mental Health***

The Department of Mental Health (DMH) provides programs and services to promote mental health and prevent and treat mental illness.<sup>258</sup> It operates two state psychiatric hospitals, four community mental health centers with inpatient units, two adult extended stay units at public health hospitals,<sup>259</sup> community-based services at 522 community sites, and contracts with outside adult and adolescent extended stay inpatient units.<sup>260</sup> DMH serves food to nearly 3,900 patients a day,<sup>261</sup> and spent \$1.1 million on the prime grocer contract in 2012.<sup>262</sup> Further research is needed to determine whether DMH contracts with food service management companies to purchase and prepare food at its larger facilities.

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<sup>251</sup> *Id.*

<sup>252</sup> Telephone Interview with Shirley Chao, Director of Nutrition, Mass. Exec. Office of Elder Affairs (April 24, 2013); *see also* MASS. EXEC. OFFICE OF ELDER AFFAIRS, *supra* note 249, at 9.

<sup>253</sup> MASS. EXEC. OFFICE OF ELDER AFFAIRS, RFR – ELD – 2012-02: USDA COMMODITY COMMERCIAL DISTRIBUTOR 2 (2012).

<sup>254</sup> *Id.* at 3.

<sup>255</sup> *Id.* at 2.

<sup>256</sup> *Id.*

<sup>257</sup> Email from Shirley Chao, Director of Nutrition, Mass. Exec. Office of Elder Affairs (May 3, 2013) (on file with author).

<sup>258</sup> *Department of Mental Health*, MASS.GOV, <http://www.mass.gov/eohhs/gov/departments/dmh> (last visited Jan. 5, 2015).

<sup>259</sup> Lemuel Shattuck Hospital in Boston and Tewksbury Hospital. *See DMH Continuing Care Inpatient Facilities*, MASS.GOV, <http://www.mass.gov/eohhs/gov/departments/dmh/dmh-continuing-care-inpatient-facilities.html> (last visited Jan. 5, 2015).

<sup>260</sup> *See* MASS. DEP'T OF MENTAL HEALTH, *supra* note 209, at 27; BAYERL, *supra* note 11, at 2.

<sup>261</sup> *See* BAYERL, *supra* note 11, at 2.

<sup>262</sup> *See* MASS. OPERAT'L SERVS. DIV., *supra* note 118.

### ***Recommendations for the Department of Mental Health***

DMH resembles DDS in that it operates larger facilities and oversees hundreds of community sites throughout the state. One way DMH can increase local food procurement at its eight larger hospitals and community mental health centers is by creating a fresh produce contract, or multiple smaller produce contracts, similar to those utilized by DOC and the Department of Children and Families. As DMH operates units at two Department of Public Health hospitals, there may be an opportunity for the two agencies to pool produce orders at those locations. If DMH contracts with an outside company to manage its food services, however, then it may be more limited in its ability to direct purchasing toward local foods.

### ***E. Department of Public Health: Public Health Hospitals***

The Department of Public Health (DPH) operates four hospitals, known as public health hospitals, which provide acute and chronic medical care to low-income individuals and others who lack access to healthcare: Lemuel Shattuck Hospital (Boston), Massachusetts Hospital School (Canton), Tewksbury Hospital (Tewksbury), and Western Massachusetts Hospital (Westfield).<sup>263</sup>

The Public Health Hospitals' core focus is delivering health care services to special populations as well as providing education and conducting research activities.<sup>264</sup> Collectively, the four hospitals serve food to approximately 800 patients each day.<sup>265</sup> DPH contracts directly with food service management companies at its inpatient facilities,<sup>266</sup> although exact information regarding the service arrangement is unknown.

### ***Recommendations for the Department of Public Health***

DPH serves food at only four locations, which makes this agency a good target for local farmers who face difficulties delivering to numerous sites. Its total patient population is not relatively large, with only 800 individuals receiving food each day. Although DPH currently contracts with outside companies to manage its food services, potentially reducing its ability to steer purchasing toward local foods, advocates can reach out to these companies to encourage them to contract with Massachusetts farms. DPH could also insert language into future contracts with food service management companies stating that DPH retains control over certain food purchasing decisions, such as whether food will be purchased from Massachusetts farms. If DPH regains control over food purchasing decisions, advocates could encourage DPH to create a fresh produce contract and explore the possibility of pooling produce orders with DMH at Lemuel Shattuck Hospital and Tewksbury Hospital, where DMH operates extended stay units.

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<sup>263</sup> See *Public Health Facilities*, MASS.GOV, <http://www.mass.gov/eohhs/gov/departments/dph/programs/hospitals> (last visited Jan. 5, 2015).

<sup>264</sup> See *id.*

<sup>265</sup> See BAYERL, *supra* note 11, at 2.

<sup>266</sup> Email from Cynthia Bayerl, Nutrition Coordinator, Mass. Dep't of Public Health (May 8, 2013) (on file with the author).

## F. Sheriffs' Offices

Massachusetts funds fourteen county sheriffs' offices,<sup>267</sup> which are responsible for, among other things, the management of jails and houses of correction within their counties. While the local sheriffs have operational and administrative control over occupied buildings, DOC establishes minimum standards of care for all persons under the custody of county facilities and conducts inspections twice a year to verify compliance with these standards.<sup>268</sup> Inmate population size varies among counties. Some counties have a much lower capacity, such as Dukes County, which can only hold up to twenty-one inmates.<sup>269</sup> Other counties can hold many more inmates, such as Suffolk County, which has beds for over 2,700 individuals, and Bristol County, which has beds for 1,400 individuals.<sup>270</sup> Collectively, the sheriffs' offices serve 42,000 meals each day,<sup>271</sup> and spent \$2.6 million on the prime grocer contract in 2012.<sup>272</sup> At least one county contracts directly with a food service management company.<sup>273</sup>

### Recommendations for the Sheriffs' Offices

Although the sheriffs' offices serve food to a large number of inmates each day, system-wide changes in procurement would be difficult, as the sheriffs' offices operate across fourteen different counties. The best way to increase procurement of local foods would be to focus strategically on one or two counties positioned near (relatively) large local farms or established aggregators that could provide a steady supply of produce during the growing season. These county sheriffs' offices could each create a fresh produce contract and solicit bids from local farms.

## G. Department of Youth Services

The Department of Youth Services (DYS) is Massachusetts' juvenile justice agency, responsible for the detention, custody, diagnosis, education, and care of delinquent juvenile offenders.<sup>274</sup> DYS has fifty-six residential facilities, which vary in levels of security.<sup>275</sup> In addition, DYS also provides twenty-six programs to youth living in the community, often through contracts with community-based organizations.<sup>276</sup> DYS has divided the state into five separate regions, and allocates its programs and

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<sup>267</sup> *Welcome to MSA*, MASS. SHERIFFS' ASS'N, <http://www.mass.gov/msa/welcomewalsh-welcome.html> (last visited Jan. 5, 2015).

<sup>268</sup> MASS. DEP'T OF CORRECTION, *supra* note 211, at 13.

<sup>269</sup> *Monthly Count Sheet*, MASS. SHERIFFS' ASS'N (August 2011), available at <http://www.mass.gov/msa/docs/count-sheet/20110810countsheet-website.xls> (last visited Jan. 5, 2015).

<sup>270</sup> *Id.*

<sup>271</sup> Data from Bayerl presentation indicates that the sheriffs' offices serve 42,000 clients per year; however it is more likely that there were 42,000 meals served, and therefore this figure has been included in the annual meals column. BAYERL, *supra* note 11, at 2. According to the most recent Bureau of Justice Statistics' Census of Jail Facilities, Massachusetts had only 13,214 inmates in local jails in 2006, and therefore presumably served approximately 40,000 meals that year. See Stephan, *supra* note 210, at 17.

<sup>272</sup> See MASS. OPERAT'L SERVS. DIV., *supra* note 118.

<sup>273</sup> Telephone Interview with Cynthia Bayerl, Nutrition Coordinator, Mass. Dep't of Public Health (April 10, 2013).

<sup>274</sup> See MASS. DEP'T OF YOUTH SERVS., PUBLIC INFORMATION PACKET 2013 2 (2013), available at <http://www.mass.gov/eohhs/docs/dys/public-info-packet.pdf> (last visited Jan. 5, 2015).

<sup>275</sup> *Programs and Services of the Department of Youth Services (DYS)*, MASS.GOV, <http://www.mass.gov/eohhs/gov/departments/dys/department-of-youth-services-programs-and-services.html> (last visited Jan. 5, 2015).

<sup>276</sup> *Id.*

services throughout the regions.<sup>277</sup> Each region contains a range of services and facilities of varying security levels, with the goal of serving youth as close to their homes as possible.

In January 2013, there were 836 youth under DYS authority.<sup>278</sup> DYS serves food at approximately sixty-seven sites, serving anywhere from 2,000-6,700 people each day.<sup>279</sup> In 2012, DYS spent \$1.8 million on food products purchased through the prime grocer contract.<sup>280</sup>

### ***Recommendations for the Department of Youth Services***

Local food advocates could conduct additional research to determine how the facilities handle purchasing decisions; in particular, local food advocates can investigate whether food purchasing decisions are made individually by each facility or whether a central procurement division is tasked with these decisions.

## ***H. The Department of Children and Families***

The Department of Children and Families (DCF) is responsible for protecting children from abuse and neglect, as well as strengthening families.<sup>281</sup> It provides programs and services related to foster care and adoption, adolescent outreach and development, sexual abuse and domestic violence, as well as family support and housing stabilization.<sup>282</sup> DCF serves approximately 16,000 meals per year (forty-six per day) at its shelter, the Temporary Home for Women & Children in Boston (Temporary Home),<sup>283</sup> which provides temporary shelter and meals for women and children, as well as meals to men.<sup>284</sup> DCF purchased \$12,000 worth of goods from the prime grocer contract in 2012 (representing 0.1% of total spent on the contract).<sup>285</sup> DCF has its own contract to purchase fresh produce for the Temporary Home, which was worth approximately \$2,000 in FY 2012.<sup>286</sup> As the Temporary Home only houses up to fifty people, its fruit and vegetable needs are small, and produce is purchased two to three times per

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<sup>277</sup> *About Us (DYS)*, MASS.GOV, <http://www.mass.gov/eohhs/gov/departments/dys/mission-statement.html> (last visited Jan. 5, 2015).

<sup>278</sup> See MASS. DEP'T OF YOUTH SERVS., *supra* note 274, at 3.

<sup>279</sup> See BAYERL, *supra* note 11, at 2.

<sup>280</sup> See MASS. OPERAT'L SERVS. DIV., *supra* note 118.

<sup>281</sup> *About the Department of Children and Families*, MASS. DEP'T OF CHILDREN AND FAMILIES, <http://www.mass.gov/eohhs/gov/departments/dcf/about-the-department-of-children-and-families.html> (last visited Jan. 5, 2015).

<sup>282</sup> *Id.*

<sup>283</sup> See BAYERL, *supra* note 11, at 2.

<sup>284</sup> See CITY OF BOSTON ARCHIVES & RECORDS MGMT. DIV., GUIDE TO THE TEMPORARY HOME FOR WOMEN AND CHILDREN RECORDS 2, *available at* [http://www.cityofboston.gov/Images\\_Documents/Guide%20to%20the%20Temporary%20Home%20for%20Women%20and%20Children%20records\\_tcm3-30027.pdf](http://www.cityofboston.gov/Images_Documents/Guide%20to%20the%20Temporary%20Home%20for%20Women%20and%20Children%20records_tcm3-30027.pdf) (last visited Jan. 5, 2015).

<sup>285</sup> See MASS. OPERAT'L SERVS. DIV., *supra* note 118.

<sup>286</sup> See DEP'T OF CHILDREN AND FAMILIES, REQUEST FOR RESPONSE: FRESH PRODUCE — DCFPRODUCE10 2 (2009), *available at* <https://www.commbuys.com> (click on the "Contract & Bid Search" link, select "Bids," input "S118512-vCurrent" into Bid # box and click "Find It," click the "S118512-vCurrent" link, in the list of file attachments click "ProduceRFR10") (last visited Jan. 5, 2015); Email from Luz Rivera, Procurement Liaison, Mass. Dep't of Children and Families (April 17, 2013) (on file with the author).

month.<sup>287</sup> The sole vendor under contract is F&B Fruit and Produce, located in Chelsea, Massachusetts.<sup>288</sup> F&B Fruit and Produce is currently working with the local food wholesaler and distributor Red Tomato, but it is unknown whether any local produce is distributed to the Temporary Home.<sup>289</sup>

### ***Recommendations for the Department of Children and Families***

One short-term strategy to increase local food purchases by DCF is for advocates to reach out to F&B Fruit and Produce to determine whether the company sources locally grown food and to help it connect with farms in Massachusetts. Advocates could also encourage DCF to authorize multiple vendors under the contract, allowing nearby farms to provide those produce items that can be grown in Massachusetts.

## ***I. Department of Veterans' Services***

The Department of Veterans' Services (DVS) connects U.S. veterans in Massachusetts with benefits and services, housing, employment, and training.<sup>290</sup> The agency oversees Veterans Service Officers, who are located in every city and town in Massachusetts. Veterans Service Officers help veterans apply for and receive federal, state, and local benefits and services.<sup>291</sup> DVS operates six shelters and one hospital,<sup>292</sup> including the Soldiers' Homes in Chelsea and Holyoke, which collectively purchase \$1.8 million worth of food from the prime grocer contract alone.<sup>293</sup> DVS serves approximately 1,400 meals per day.<sup>294</sup>

### ***Recommendations for the Department of Veterans' Services***

DVS could increase local food procurement by focusing on purchases made by the Soldiers' Homes in Chelsea and Holyoke, which spent at least \$1.8 million on food-related products in 2012.<sup>295</sup> Local food advocates could work with the agency to create a fresh produce contract, similar to those utilized by DOC and DCF, which would allow the agency to contract with local farmers. As the two homes are located in different areas of the state, the contract solicitation could be drafted so that it authorizes multiple vendors and allows vendors to provide goods to only one location, thus minimizing delivery distance.

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<sup>287</sup> Typical weekly orders consist of twelve apples, three cantaloupes, two heads of lettuce, four green peppers, two red peppers, one pound of tomatoes, a half crate of oranges, one crate of potatoes, and one pound of carrots. See DEP'T OF CHILDREN AND FAMILIES, *supra* note 286, at 2; Rivera, *supra* note 286.

<sup>288</sup> See DEP'T OF CHILDREN AND FAMILIES, S118512-vCURRENT\_OD.XLSX, available at <https://www.commbuys.com> (click on the "Contract & Bid Search" link, select "Bids," input "S118512-vCurrent" into Bid # box and click "Find It," click the "S118512-vCurrent" link, in the list of file attachments click "S118512-vCurrent\_OD.xlsx" and view column AW in "BidHeader" tab) (last visited Jan. 5, 2015).

<sup>289</sup> Email from Simca Horwitz, Mass. Farm to School Project (April 2, 2015), on file with author.

<sup>290</sup> Veterans' Services, MASS.GOV, <http://www.mass.gov/veterans/> (last visited Jan. 5, 2015).

<sup>291</sup> About Veterans' Services, MASS.GOV, <http://www.mass.gov/veterans/about-veterans-services/> (last visited Jan. 5, 2015).

<sup>292</sup> See BAYERL, *supra* note 11, at 2.

<sup>293</sup> See MASS. OPERAT'L SERVS. DIV., *supra* note 118.

<sup>294</sup> See BAYERL, *supra* note 11, at 2.

<sup>295</sup> See MASS. OPERAT'L SERVS. DIV., *supra* note 118.

## VII. CONCLUSION

Chapter 7, Section 23B of the General Laws of Massachusetts serves as an official recognition of the legislature's support for the burgeoning local food movement, as well as acknowledgement of the power of state agencies to support Massachusetts' farming and food economy. State agencies procure large volumes of food each year, and therefore there is great opportunity to promote local food systems by promoting agency procurement of Massachusetts-grown food. These, agencies often serve populations relying—often exclusively—on the state for their meals, and thus state agencies have the ability to improve the health of these individuals by purchasing more food from local farms.

However, Section 23B's implementation has stalled, and there are still a number of barriers and challenges to state agency procurement of Massachusetts-grown food. Implementation of Section 23B remains sluggish due to a lack of information about Section 23B, a lack of tracking and enforcement mechanisms, and a lack of encouragement of local farmers to enroll in existing procurement support programs such as the SBPP.

This project set out to better understand Massachusetts' local procurement law and the potential for increased procurement of locally grown food by state agencies in Massachusetts. Although passage of Section 23B took a small step toward improving the local food system by showing the legislature's interest in supporting the local food economy and increasing access to locally grown food products, the law is not a sufficient mechanism to alter procurement practices by state agencies. Through conversations with local food advocates, aggregators, and agency officials, this report identified current challenges and possible solutions to increase local food procurement. Massachusetts farmers, aggregators, and local food advocates can advocate for a range of improvements in the procurement laws and policies of state agencies to achieve increased local food purchasing. This report provides just a few examples of the range of opportunities available to Massachusetts' agencies. The research and recommendations contained within this report, combined with the growing momentum in the local food movement, should give local food advocates the tools and capabilities to join forces already in motion to achieve the goal of meaningfully increasing local food procurement by state agencies—thereby leading to a stronger, more robust local food system in the future.

# APPENDICES

## Appendix A: Summary of Recommendations

Challenge	Recommendations
<p><i>Lack of Information about Section 23B</i></p>	<ul style="list-style-type: none"> <li>➤ Educate state procurement officials about Section 23B through informational materials about basic issues in local food procurement.</li> <li>➤ Host joint networking and informational sessions, bringing together state procurement agents and local farmers.</li> <li>➤ Create a public directory of agency purchasing agents to help advocates and Massachusetts farmers identify local food procurers.</li> <li>➤ Create a directory of Massachusetts farms and aggregators interested in selling to state agencies.</li> <li>➤ Condition the receipt of state funds for community nutrition programs on attendance at mandatory local procurement trainings.</li> </ul>
<p><i>Lack of Incentive to Comply with Section 23B and Lack of Data about Compliance</i></p>	<ul style="list-style-type: none"> <li>➤ Establish a tracking mechanism and reporting requirement.</li> <li>➤ Establish a benchmark.</li> <li>➤ Add a preference for regional food products to Section 23B.</li> </ul>
<p><i>Lack of Participation in Existing Procurement Support Programs</i></p>	<ul style="list-style-type: none"> <li>➤ Encourage enrollment in the Small Business Purchasing Program.</li> <li>➤ Encourage enrollment in the Supplier Diversity Program.</li> <li>➤ Create a policy establishing a Massachusetts-grown Agricultural Products Preference Program, and require state agencies to give preference to Massachusetts farms and aggregators enrolled in the program.</li> </ul>
<p><i>Prime Grocer Contract Requires Provision of Locally and Non-Locally Available Goods</i></p>	<ul style="list-style-type: none"> <li>➤ Split food contracts, such that locally available produce is separated from citrus and other goods that cannot be grown in Massachusetts.</li> </ul>

## ***Appendix B: Massachusetts General Laws, Chapter 7, Section 23B***

***(As amended Oct. 28, 2010)***

(a) Notwithstanding any general or special law to the contrary, and to the extent permitted by federal law, a state agency, authority or trustees or officers of a state college or university designated by such trustees when purchasing products of agriculture as defined in section 1A of chapter 128, including but not limited to, fruits, vegetables, eggs, dairy products, meats, crops, horticultural products or products processed into value added products as part of a Massachusetts farm operation, shall prefer products grown in the commonwealth or products produced using products grown in the commonwealth as well as fish, seafood, and other aquatic products.

(b) To effectuate the preference for those products of agriculture grown or produced using locally-grown products, the state purchasing agent responsible for procuring the products on behalf of a state agency, authority or trustees or officers of a state college or university designated by such trustees shall, in advertising for bids, contracts or otherwise procuring products of agriculture, make reasonable efforts to facilitate the purchase of such products of agriculture grown or produced using products grown in the commonwealth.

(c) The state purchasing agent responsible for procuring the products on behalf of a state agency or authority shall purchase the products of agriculture grown or produced using products grown in the commonwealth, unless the price of the goods exceeds, by more than 10 percent, the price of products of agriculture grown or produced using products grown outside of the commonwealth.

## **Appendix C: Section 23B Compliance Letter from Operational Services Division**



**The Commonwealth of Massachusetts  
Executive Office for Administration and Finance  
Operational Services Division  
One Ashburton Place, Boston, MA 02108-1552**



<http://www.comm-pass.com>

**Deval L. Patrick  
Governor**

**Leslie A. Kirwan  
Secretary**

**Timothy P. Murray  
Lieutenant Governor**

**Ellen M. Bickelman  
State Purchasing Agent**

**To: Department Heads, Chief Fiscal Officers, and General Counsels**

**From: Ellen Bickelman  
State Purchasing Agent**

**Date: January 11, 2007**

**Re: Massachusetts Agricultural Products**

I am writing to inform you of a recently enacted law that establishes a preference for purchasing Massachusetts agricultural products. Chapter 123 of the Acts of 2006 directs the State Purchasing Agent to grant a preference to products of agriculture that are grown or produced using locally grown products. Specifically, Chapter 123 directs those responsible for procuring products on behalf of a state agency or authority (1) to make reasonable efforts to facilitate the purchase of products of agriculture grown or produced using products grown in the Commonwealth and (2) to purchase these products, unless the price of the goods exceeds the price of products of agriculture from outside the Commonwealth by more than 10%.

Products of agriculture are defined to include any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products, the raising of livestock, including horses, the raising of domesticated animals, bees or fur-bearing animals, and any forestry or lumbering operations. OSD will incorporate this new requirement into statewide procurements for agricultural products and departments must also be in compliance with this new law when conducting procurements for products not on statewide contract that fall within the definition of agricultural products. OSD is in the process of updating the Procurement Information Center (PIC) and will include new language in the Required Specifications document to reflect the requirements of the new law. In the interim, the following language can be referenced in department procurements for agricultural products to ensure compliance with the new preference law:

Required Specifications for Purchase of Agricultural Products - Chapter 123 of the Acts of 2006 directs the State Purchasing Agent to grant a preference to products of agriculture grown or produced using locally grown products. Such locally grown or produced products shall be purchased unless the price of the goods exceeds the price of products of agriculture from outside the Commonwealth by more than 10%. For purposes of this preference, products of agriculture are defined to include any agricultural, aquacultural, floricultural or horticultural commodities, the growing and harvesting of forest products, the raising of livestock, including horses, raising of domesticated animals, bees, fur-bearing animals and any forestry or lumbering operations.

If you have any questions, please contact Bill McAvoy, OSD's General Counsel at 617-720-3327 or [William.mcavoy@state.ma.us](mailto:William.mcavoy@state.ma.us)

Thank you for your attention to this matter.

**Tel: (617) 720-3300**

HARVARD FOOD LAW AND POLICY CLINIC

**TDD: (617) 727-2716**



**Fax: (617) 727-4527**

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## Appendix D: Massachusetts Executive Agencies

Below is a list of the eighty-two Massachusetts Executive Branch agencies.<sup>296</sup> These agencies are subject to Section 23B's local agricultural products preference law, E.O. 509's nutrition standards and E.O. 523's small business purchasing preference, as well as OSD's procurement requirements.

<b>Executive Office for Administration and Finance</b>	Executive Office for Administration and Finance
	Administrative Law Appeals Division
	Appellate Tax Board
	Bureau of State Buildings
	Capital Asset Management and Maintenance Division
	Civil Service Commission
	Department of Revenue
	Developmental Disabilities Council
	George Fingold Library
	Group Insurance Commission
	Human Resources Division
	Information Technology Division
	Massachusetts Office on Disability
	Operational Services Division
Public Employee Retirement Administration	
Teachers' Retirement System	
<b>Executive Office of Education</b>	Executive Office of Education
	Department of Early Education and Care
	Department of Elementary and Secondary Education
	Department of Higher Education
<b>Executive Office of Energy and Environmental Affairs</b>	Executive Office of Energy and Environmental Affairs
	Department of Agricultural Resources
	Department of Conservation and Recreation
	Department of Energy Resources
	Department of Environmental Protection
	Department of Fish and Game
	Department of Public Utilities
	State Reclamation Board
<b>Executive Office of Health and Human Services</b>	Executive Office of Health and Human Services
	Department of Children and Families

<sup>296</sup> This list was compiled based on guidance issued by Operational Services Division (OSD) as well as more recent guidance issued jointly by OSD and the Office of the Comptroller, which we then cross-referenced with the Supplier Diversity Office's Comprehensive Annual Report from FY2012. See MASS. OPERAT'L SERVS. DIV., *supra* note 64, at 44; *Commodities and Services*, Office of the Comptroller and Operational Services Division 4 (Jul. 2004), available at <http://www.mass.gov/osc/docs/policies-procedures/contracts/po-procon-goods-services.doc>; *Operational Services Division Procurement Introduction*, OPERATIONAL SERVS. DIV. 3 (2007), available at [http://www.google.com/url?sa=t&rct=j&q=operational%20services%20divison%20procurement%20introduction&source=web&cd=2&ved=0CD4QFjAB&url=http%3A%2F%2Fwww.mass.gov%2Ffanf%2Fdocs%2Fosd%2Fpic%2Fprocurement-intro.doc&ei=9\\_nAUPmUCI2s0AGM24HQA&usg=AFQjCNGhG44NOTRmrZbddCD-AY5CtmXwpw](http://www.google.com/url?sa=t&rct=j&q=operational%20services%20divison%20procurement%20introduction&source=web&cd=2&ved=0CD4QFjAB&url=http%3A%2F%2Fwww.mass.gov%2Ffanf%2Fdocs%2Fosd%2Fpic%2Fprocurement-intro.doc&ei=9_nAUPmUCI2s0AGM24HQA&usg=AFQjCNGhG44NOTRmrZbddCD-AY5CtmXwpw) (last visited Dec. 6, 2012).

	Department of Developmental Services
	Department of Mental Health
	Department of Public Health
	Department of Transitional Assistance
	Department of Veterans' Services
	Department of Youth Services
	Division of Health Care Finance and Policy
	Executive Office of Elder Affairs
	Massachusetts Commission for the Blind
	Massachusetts Commission for the Deaf and Hard of Hearing
	Massachusetts Rehabilitation Commission
	Office for Refugees and Immigrants
	Soldiers' Home in Chelsea
	Soldiers' Home in Holyoke

<b>Executive Office of Housing and Economic Development</b>	Executive Office of Housing and Economic Development
	Department of Business and Technology
	Department of Housing and Community Development
	Department of Telecommunications and Cable
	Division of Banks
	Division of Insurance
	Division of Professional Licensure
	Division of Standards
	Massachusetts Marketing Partnership
	Office of Consumer Affairs and Business Regulation
	State Rating Bureau
	State Rehabilitation Council

<b>Executive Office of Labor and Workforce Development</b>	Executive Office of Labor and Workforce Development
	Department of Industrial Accidents
	Department of Labor and Workforce Development
	Department of Labor Relations
	Joint Labor-Management Committee

<b>Executive Office of Public Safety and Security</b>	Executive Office of Public Safety and Security
	Criminal History Systems Board
	Department of Correction
	Department of Fire Services
	Department of Public Safety
	Department of State Police
	Massachusetts Emergency Management Agency
	Municipal Police Training Committee
	Office of the Chief Medical Examiner
	Parole Board
	Sex Offender Registry Board

<b>Department of Transportation</b>	Department of Transportation
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	Massachusetts Aeronautics Commission
	Merit Rating Board
	Registry of Motor Vehicles
<b>Office of the Comptroller of the Commonwealth</b>	Office of the Comptroller of the Commonwealth
<b>Office of the Governor</b>	Office of the Governor
<b>Other Organizations</b>	Board of Library Commissioners
	Commission Against Discrimination
	Disabled Persons Protection Commission
	Sheriffs' Offices

## Appendix E: Procurement Laws across the United States

### Institutions Covered and Type of Preference

State	Institutions Covered	Type of Preference
Alabama	Agencies, Colleges/Universities	Price Preference, Reciprocity
	<b>Source:</b> ALA. CODE § 41-16-20 (2012); ALA. CODE § 41-16-27 (2012).	
Alaska	Agencies, Colleges/Universities	Price Preference
	<b>Source:</b> ALASKA STAT. ANN. § 36.15.050 (West 2012).	
California	Agencies, Colleges/Universities	Tie-Goes-To-Local
	<b>Source:</b> CAL. GOV'T CODE § 4331 (West 2012).	
Colorado	Agencies, Colleges/Universities	Reasonableness
	<b>Source:</b> COLO. REV. STAT. ANN. §§ 8-18-103, 24-101-301 (West 2012) (but allowing the “governing board of each institution of higher education” to “elect to be excluded from the meaning of ‘governmental body’” such that it will not be subject to the preference).	
Connecticut	Agencies, Colleges/Universities	Tie-Goes-To-Local
	<b>Source:</b> CONN. GEN. STAT. ANN. § 4a-51 (West 2012).	
Florida	Agencies	Tie-Goes-To-Local
	<b>Source:</b> FLA. STAT. ANN. § 287.082 (West 2012), <i>but see</i> FLA. STAT. ANN. § 287.0822 (West 2012) (applying less clearly to agencies).	
Georgia	Agencies, Colleges/Universities	Reasonableness
	<b>Source:</b> GA. CODE ANN. § 50-5-60 (West 2012); GA. CODE ANN. § 50-5-61 (West 2012).	
Hawaii	Agencies	Price Preference, Reciprocity
	<b>Source:</b> HAW. REV. STAT. § 103D-1002 (West 2012); HAW. REV. STAT. § 103D-1004 (West 2012).	
Idaho	Agencies	Tie-Goes-To-Local
	<b>Source:</b> IDAHO ADMIN. CODE r. 38.05.01.001 (2012); IDAHO ADMIN. CODE r. 38.05.01.082 (2012).	
Illinois	Agencies, Colleges/Universities	Price Preference (optional)
	<b>Source:</b> 30 ILL. COMP. STAT. ANN. 500/45-50 (West 2012); 30 ILL. COMP. STAT. ANN. 595/10 (West 2012).	
Indiana	Agencies, Colleges/Universities	Price Preference
	<b>Source:</b> IND. CODE ANN. § 5-22-15-23.5 (West 2012).	
Iowa	Agencies, Colleges/Universities	Tie-Goes-To-Local
	<b>Source:</b> IOWA CODE ANN. § 73.1 (West 2012).	
Kentucky	Agencies, Colleges/Universities	Tie-Goes-To-Local
	<b>Source:</b> KY. REV. STAT. ANN. § 45A.645 (West 2012).	
Louisiana	Agencies, Colleges/Universities	Price Preference
	<b>Source:</b> LA. REV. STAT. ANN. § 38:2251 (2012); LA. REV. STAT. ANN. § 39:1595 (2012); LA. REV. STAT. ANN. § 38:2251.1 (2012).	

Maine	Agencies, Colleges/Universities	Tie-Goes-To-Local
	<b>Source:</b> ME. REV. STAT. TIT. 7, § 212(3) (West 2014); ME. REV. STAT. TIT. 7, § 213 (West 2014).	
Maryland	Agencies, Colleges/Universities.	Price Preference
	<b>Source:</b> MD. CODE ANN., STATE FIN. & PROC. § 14-407 (West 2012).	
Massachusetts	Agencies (optional for Colleges/Universities)	Price Preference
	<b>Source:</b> MASS. GEN. LAWS ANN. ch. 7, § 23B (West 2012).	
Minnesota	Agencies	Reasonableness
	<b>Source:</b> MINN. STAT. ANN. § 16C.02 (2012); MINN. STAT. ANN. § 16C.03 (West 2012); MINN. STAT. ANN. § 16C.12 (West 2012).	
Mississippi	Agencies, Colleges/Universities	Tie-Goes-To-Local
	<b>Source:</b> MISS. CODE. ANN. § 31-7-1 (West 2012); MISS. CODE. ANN. § 31-7-15 (West 2012).	
Missouri	Agencies, Colleges/Universities	Tie-Goes-To-Local
	<b>Source:</b> MO. ANN. STAT. § 34.010 (West 2012); MO. ANN. STAT. § 34.030 (West 2012); MO. ANN. STAT. § 34.070 (West 2012).	
Montana	Agencies, Colleges/Universities	Reasonableness
	<b>Source:</b> MONT. CODE ANN. § 18-4-132 (West 2011).	
New Jersey	Agencies, Colleges/Universities	Reasonableness
	<b>Source:</b> N.J. STAT. ANN. § 52:32-1.6 (West 2012).	
New York	Agencies, Colleges/Universities	Benchmark
	<b>Source:</b> N.Y. STATE FIN. LAW § 165 (McKinney 2012).	
North Carolina	Agencies, Colleges/Universities	Tie-Goes-To-Local
	<b>Source:</b> N.C. GEN. STAT. ANN. § 143-59 (West 2012).	
Ohio	Agencies, Colleges/Universities	Price Preference
	<b>Source:</b> OHIO ADMIN. CODE 123:5-1-01 (2012); OHIO ADMIN. CODE 123:5-1-06 (2012) (allowing for a price preference to be applied to bordering states).	
Oklahoma	Agencies, Colleges/Universities	Reciprocity, Tie-Goes-To-Local
	<b>Source:</b> OKLA. STAT. tit. 74, § 85.2(34) (2014); OKLA. STAT. tit. 74, § 85-17A (2014).	
Oregon	Agencies (unclear if applies to Colleges/Universities)	Tie-Goes-To-Local, Price Preference (optional), Reciprocity (optional)
	<b>Source:</b> OR. REV. STAT. ANN. § 279A.120 (West 2012); OR. REV. STAT. ANN. § 279A.128 (West 2012).	
Pennsylvania	Agencies (unclear if applies to Colleges/Universities)	Tie-Goes-To-Local
	<b>Source:</b> 4 PA. CODE § 7a.41 (2013).	
Rhode Island	Agencies, Colleges/Universities	Tie-Goes-To-Local
	<b>Source:</b> R.I. GEN. LAWS ANN. § 37-2-8 (West 2013).	

South Carolina	Agencies, Colleges/Universities	Price Preference
	<b>Source:</b> S.C. CODE ANN. § 11-35-1510 (2012); S.C. CODE ANN. § 11-35-1520 (2012); S.C. CODE ANN. § 11-35-1524 (2012).	
Tennessee	Agencies, Colleges/ Universities	Tie-Goes-To-Local
	<b>Source:</b> TENN. CODE ANN. § 12-3-1102(6) (2014); TENN. CODE ANN. § 12-3-1113(a) (2014).	
Texas	Agencies, Colleges/ Universities	Tie-Goes-To-Local
	<b>Source:</b> TEX. GOV'T CODE ANN. § 2155.444 (West 2012).	
Utah	Agencies, Colleges/Universities	Tie-Goes-To-Local, Reciprocity
	<b>Source:</b> UTAH CODE ANN. § 63G-6a-104 (2014); UTAH CODE ANN. § 63G-6a-1002 (2014).	
Vermont	Agencies, Colleges/Universities	Tie-Goes-To-Local
	<b>Source:</b> VT. STAT. ANN. tit. 29, § 909 (West 2012).	
Virginia	Agencies, Colleges/Universities	Tie-Goes-To-Local
	<b>Source:</b> VA. CODE ANN. § 2.2-4301 (West 2013); VA. CODE ANN. § 2.2-4324 (West 2012).	
Washington	Agencies, Colleges/Universities	Reciprocity
	<b>Source:</b> WASH. ADMIN. CODE § 236-48-085 (2012); WASH. ADMIN. CODE § 200-300-075 (2012).	
Wyoming	Agencies, Colleges/Universities	Tie-Goes-To-Local, Price Preference (optional)
	<b>Source:</b> WYO. STAT. ANN. § 16-6-105 (West 2012).	

### **Working Groups to Assist with Increasing Local Food Procurement**

<b>State</b>	<b>Title</b>	<b>Specific Tasks of Working Group</b>
Illinois	Local Food, Farms and Jobs Council	Includes assisting state agencies, State-owned facilities, and other entities with the purchase of local farm or food products and with tracking and reporting of such purchases in order to meet the goals established in the statute.
	<b>Source:</b> 30 ILL. COMP. STAT. ANN. 595/10 (West 2012).	
Iowa	Local Food and Farm Program	Includes increasing consumer and institutional spending on Iowa-produced and marketed foods.
	<b>Source:</b> IOWA CODE ANN. § 267A.1 (West 2012).	
Maine	State Food Purchasing Coordinator	To assist in the development of connections between state and school purchasers, Maine food producers and brokers and wholesalers of food.
	<b>Source:</b> ME. REV. STAT. tit. 7, § 214 (2011).	
Massachusetts	Massachusetts Food Policy Council	Includes developing recommendations to advance the following food system goals: the development and promotion of programs that deliver healthy Massachusetts-grown foods to Massachusetts residents, through programs such as (1) school meals, summer meals, and other child and adult care

		programs; and, (2) increased institutional purchases of Massachusetts-grown foods and other programs to make access to healthy Massachusetts products affordable.
	<b>Source:</b> MASS. GEN. LAWS ANN. ch. 20, § 6C (West 2012).	
Vermont	The Farm-to-Plate Investment Program, part of Sustainable Jobs Fund Program; Rozo-McLaughlin Farm-to-School Program	Includes assisting Vermont producers to increase their access to commercial markets and institutions, including schools, state and municipal governments, and hospitals.
	<b>Source:</b> VT. STAT. ANN. tit. 6, § 4724 (West 2012).	

### Reports to Track Local Food Procurement

State	Details of Report	Demonstrable Progress Required?
Colorado	Must report any cost increases associated with the provisions of the procurement section.	No
	<b>Source:</b> COLO. REV. STAT. ANN. § 8-18-103(4) (West 2012).	
Illinois	Task force has set goals, but has not indicated whether agencies are responding to information requests.	No
	<b>Source:</b> 30 ILL. COMP. STAT. ANN. 595/10 (West 2012).	
Iowa	Local Food and Farm Program submitted a financial report to Iowa Legislature in June 2012, which set goals for tracking the purchase of Iowa-grown foods by agencies and institutions.	No
	<b>Source:</b> IOWA CODE ANN. § 267A.7 (West 2012).	
Kentucky	Must report annual expenditures.	No
	<b>Source:</b> KY. REV. STAT. ANN. § 45A.645 (West 2012).	
New York	Must submit a report annually before December 1.	Yes, must track implementation of local food procurement law.
	<b>Source:</b> N.Y. STATE FIN. LAW § 165(4) (McKinney 2013).	
Pennsylvania	Must submit a report to the Pennsylvania Department of Agriculture before January 1.	No
	<b>Source:</b> 4 PA. CODE § 7a.44 (2013).	
Vermont	Must submit a report as part of Vermont's Farm-to-Plate investment program.	No
	<b>Source:</b> VT. STAT. ANN. tit. 15A, § 329 (West 2012).	

## **Appendix F: July 2014 Food Order Guides**

According to the July 2014 food order guides for the three main vendors listed in the discussion of the prime grocer contract, the below list of fruits, vegetables and eggs are available for purchase from the listed subvendors (this list includes only unprocessed or minimally processed products):<sup>297</sup>

### **Performance Food Group**

- Allens (blackeyed peas, cut green beans, creamed corn)
- Alta Cucina (plum tomatoes)
- Ang Mia (crushed tomatoes)
- Arc Gold (butternut squash)
- Assoluti (diced tomatoes)
- Atalanta (grape leaves)
- B&G (dill pickles)
- Bella Ro (tomato puree, beans)
- Brady FA (blueberries)
- C&F Food (lentils, beans, split peas)
- Chill RP (chopped spinach)
- Cool Crisp (peppers, banana peppers)
- Cosmos (chopped garlic)
- Cul Selc (edamame)
- Del Dest (peppers)
- Fineline (chopped spinach)
- Full Red (diced tomatoes)
- Furmanos (beans, crushed tomatoes)
- Goya (mango, peas)
- Hanover (pickled beets)
- Idahoan (potatoes)
- Hunts (tomato puree)
- Libby P (pumpkin)
- Magellan (pineapples)
- Mancini (peppers)
- Nat Pot (potatoes)
- Nonparel (mixed vegetables, broccoli, strawberries, baby carrots, sliced carrots, corn, peas, cut green beans, Brussels sprouts, beans, zucchini squash, cauliflower)
- Noreast (potatoes, sliced apples, sliced peaches, diced pears, olives, pineapples, diced peppers)
- Norpac (corn, peas, carrots)

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<sup>297</sup> On file with the author.

- Packer (corn, beans, mushrooms, strawberries, broccoli, spinach, peas, mixed fruit, peppers, pineapples, diced pears, diced peaches, carrots, oranges)
- Pembroke (pears)
- Redsto (potatoes)
- Regal (cauliflower)
- Regal Crown (pickles)
- Roland (artichoke hearts, baby corn, water chestnuts, peppers, oranges)
- Roma (peppers, crushed tomatoes, olives)
- Rosarita (peppers)
- Roast Works (peppers, corn)
- Schwartz (peppers, pickles)
- Simplot (strawberries, sliced apples, avocados, squash)
- Simplot Classic (sliced peaches, green beans, avocados)
- SNY Farm (mixed vegetables, corn, carrots, beets, waxed beans, green beans)
- Stapleton (prunes)
- Suzy Bel (pureed tomatoes)
- Sweet Things (sweet potatoes)
- Tamara (strawberries)
- West Creek (sliced apples, beans, broccoli, cauliflower, pickles, sliced peaches, mixed fruit, corn, diced carrots, peppers, tomatoes, peas, collard greens, onions, sliced pears, green beans, mixed vegetables)
- Wyman (cranberries, raspberries, blueberries)

#### **US Foods**

- Driscoll Strawberries (strawberries)
- El Pasado (beans)
- Harvest VL (sliced apples, corn, beans, tomatoes, frozen green beans, frozen broccoli, frozen baby carrots, frozen carrots, frozen cauliflower, frozen corn, frozen peas)
- Intl. Gold (pineapples)
- Intl. Green (peppers)
- Mon-D (apricots, beets, creamed corn, mixed fruit, olives, peaches, diced pears, peppers, potatoes, sweet potatoes, prunes, beans, sliced tomatoes, mixed vegetables)
- Monarch (green beans, peppers, diced tomatoes, sliced apples, green beans, frozen broccoli, corn on the cob, frozen corn, frozen peas, frozen carrots, dill pickles, spinach, squash, butternut squash, sliced carrots, zucchini)
- Nemco (pears)

- Packer (mixed fruit, diced peaches, pears, pineapples, avocados, bananas, cabbage, cantaloupe, carrots, cucumber, eggplant, ginger root, grapefruit, honeydew, kiwi, peppers, raspberries, butternut squash, watermelon)
- Popeye (spinach)
- Reichel (apples)
- Roland (oranges)
- Roseli (diced tomatoes, pureed tomatoes)
- Sunrich (cantaloupe, mixed fruit, grapefruit, honeydew, pineapples)
- Cross Valley (mixed fruit, apples, green beans, blackberries, blueberries, broccoli, Brussels sprouts, baby carrots, carrots, celery, cucumber, grapes, lemon, lettuce, mushroom, onion, orange, peppers, pineapples, potatoes, spinach, salad mix, squash, tomatoes, zucchini)
- Sunsweet (prunes)

**Reinhart<sup>298</sup>**

- No vendor specified (apples, bananas, beans, beets, cabbage, carrots, cucumbers, honeydew, grapefruit, kale, lettuce, onions, oranges, peaches, pineapples, raspberries, spinach, squash, tomatoes, turnips)

**Available through All Three Vendors**

- Dole (mixed fruit, pineapples, strawberries, fruit salad, diced peaches)

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<sup>298</sup> Order guide does not specify month. Accessed July 2014.