

2009 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB782)

Received: 03/08/2010

Received By: **btradewe**

Wanted: **Soon**

Companion to LRB:

For: **Phil Garthwaite (608) 266-1170**

By/Representing: **Jon Wolkomir**

May Contact: **DATCP**

Drafter: **btradewe**

Subject: **Agriculture - other
State Govt - procurement**

Addl. Drafters: **chanaman**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Garthwaite@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Encouraging purchase of food produced in this state, with several changes

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	btradewe 03/08/2010 chanaman 03/10/2010	kfollett 03/10/2010		_____			State
/P1			rschluet 03/10/2010	_____	sbasford 03/10/2010		State
/1	btradewe 03/19/2010	kfollett 03/19/2010	mduchek 03/19/2010	_____	sbasford 03/19/2010	sbasford 03/19/2010	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

03-25-2010
(1/1")
Per Joint Rule 48(2)

Requested by Sean
in Garthwaites Office

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/?	btradewe 03/08/2010 chanaman 03/10/2010	kfollett 03/10/2010 11/5/10 3/19	rschlue 3/19	_____	_____	_____	State
/P1			rschlue 03/10/2010	_____	sbasford 03/10/2010	_____	

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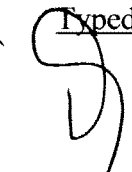
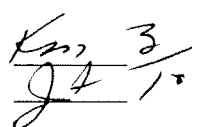
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1?	btradewe	1/11/10 3/10					

FE Sent For:

<END>

Tradewell, Becky

From: Wolkomir, Jon
Sent: Monday, March 08, 2010 10:51 AM
To: Tradewell, Becky
Subject: Email from LRB Website

Hello Becky,

As per our phone conversation here are the recomened changes to ab 782 from DATCP. If you have any questions or need any additional clarification please feel free to either call or email me back.

Thank you,

Jonathan M Wolkomir
Legislative Assistant
Rep. Phil Garthwaite
49th Assembly District
(608) 266-1170
(888) 872-0049

- ✓ 1) DATCP recommends that the bill removes the creation of the Local, Food, Farms, and Jobs Council and instead utilizes the existing BLBW advisory council to provide administrative efficiencies and avoid duplication of efforts. It should also be noted that in order for the council to meet the intent of the bill, additional resources in staff time, and supplies and services would be necessary (see fiscal estimate for details).
- 2) DATCP recommends striking the language in section 3. 16.75 (3p) (d) and replacing with language that reflects the intent found in the "geographic preferences in procurements for the child nutrition programs" language found in Section 4302 of P.L. 110-246 amended section 9(j) of the National School Lunch Act to require the Secretary of Agriculture to encourage institutions operating the Child Nutrition Programs to purchase locally raised agriculture products. This program has proved to be useful for Wisconsin schools and may be useful if expanded beyond the Child Nutrition Programs and include other state agencies. 42 USC
1758 (j)
- ✓ 3) DATCP recommends further defining local food in section 4. 93.49 (1) (b) The Buy Local, Buy Wisconsin grant program uses the following definition: Wisconsin food products: "Food product" means an unprocessed commodity or processed product that is used for drink by humans. "Food product" includes a food product ingredient. "Wisconsin food product" means a food product that is one of the following: grown in this state; produced from animals kept in the state; or primarily derived from food products that are grown in this state or produced from animals kept in this state.
- ✓ 4) DATCP recommends clarifying Section 4. 93.49 (2) (b)-(br). As written, DATCP assumes that council staff will provide communication and coordination efforts to get information to relevant entities and will not provide technical assistance or do actual tracking activities. DATCP needs clarification if this assumption is correct.
- ✓ 5) DATCP recommends striking Section 4. 93.49 (2) (i): "Set annual goals for the purchase of local food products by residents of this state and evaluate progress toward meeting the goals." This would require a survey and tracking system that is not in existence and the resources needed far outweigh the benefits gained.



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

Date: March 2, 2010

To: Distinguished Members of the Committee on Rural Economic Development

From: Teresa Cuperus, Buy Local, Buy Wisconsin Program Manager
Lora Klenke, Agricultural Market Development Bureau Director
Agricultural Market Development Bureau
Division of Agricultural Development
Wisconsin Department of Agriculture, Trade & Consumer Protection

RE: Assembly Bill 782

Thank you for permitting the Department of Agriculture, Trade and Consumer Protection the opportunity to submit information regarding AB782.

Supporting the growth of locally grown food positively impacts farmers, communities, consumer nutrition, and Wisconsin's economy. DATCP would like to take this opportunity to thank the Wisconsin legislature for the continued support of local food system development.

Currently, DATCP administers the Buy Local, Buy Wisconsin (BLBW) program, an economic development program passed in the Governor Doyle's 07-09 biennial budget. BLBW is designed to increase the purchase of Wisconsin grown/produced food products for sale to local purchasers. The program objectives include:

- 1) Identifying and addressing hurdles facing regional food system development: distribution, processing, access to markets, lack of state policy, and institutional purchasing;
- 2) Consolidating, coordinated efforts to bring new market opportunities for producers, increasing farm income; and
- 3) Developing programs and resources for Wisconsin's local food producers.

These objectives are met through a number of program elements including:

- Buy Local, Buy Wisconsin Advisory Group - The BLBW program is supported by a statewide advisory group with members representing many of the organizations outlined in AB 782. The BLBW advisory group has been active in assisting DATCP staff in program development and in providing direction for the growth of regional food systems.
- Buy Local, Buy Wisconsin Grant Program - Many of the BLBW grant recipients are addressing institutional food procurement barriers with innovative projects and are demonstrating success. Just recently, the Institutional Food Market Coalition (IFM) was awarded \$35,000 to increase local food sales by sharing best practices for selling to institutions with growers and aggregators, and working with local partners to connect growers, produce distributors and institutional buyers in southern Wisconsin.
- WI Local Food Marketing Guide - A step by step guide for local food producers interested in entering local food markets.
- Producer's First - One-on-one technical assistance program for local food producers.
- Buy Local, Buy Wisconsin Workshop Road Shows - Intensive day long workshops.

Agriculture generates \$59 billion for Wisconsin

2811 Agriculture Drive • PO Box 8911 • Madison, WI 53708-8911 • Wisconsin.gov

An equal opportunity employer

designed to reduce barriers for local food producers.

- WI Food Safety Assessment for fruits and vegetables - Contracting with FamilyFarmed.org to identify food safety barriers and implement solutions.
- WI State-wide Farm to School Programming - Partnering with DHS, DPI, CIAS, REAP, AmeriCorps Farm to school, and many others to create statewide farm to school programs.
- BLBW supports and works in coordination with additional DATCP local food programs including: Something Special from Wisconsin, Savor Wisconsin, and the AmeriCorps Farm to School Program.

DATCP would like to provide the following information in regards to AB 782.

- 1) DATCP recommends that the bill removes the creation of the Local, Food, Farms, and Jobs Council and instead utilizes the existing BLBW advisory council to provide administrative efficiencies and avoid duplication of efforts. It should also be noted that in order for the council to meet the intent of the bill, additional resources in staff time, and supplies and services would be necessary (see fiscal estimate for details).
- 2) DATCP recommends striking the language in section 3. 16.75 (3p) (d) and replacing with language that reflects the intent found in the “geographic preferences in procurements for the child nutrition programs” language found in Section 4302 of P.L. 110-246 amended section 9(j) of the National School Lunch Act to require the Secretary of Agriculture to encourage institutions operating the Child Nutrition Programs to purchase locally raised agriculture products. This program has proved to be useful for Wisconsin schools and may be useful if expanded beyond the Child Nutrition Programs and include other state agencies.
- 3) DATCP recommends further defining local food in section 4. 93.49 (1) (b) The Buy Local, Buy Wisconsin grant program uses the following definition: Wisconsin food products: “Food product” means an unprocessed commodity or processed product that is used for drink by humans. “Food product” includes a food product ingredient. “Wisconsin food product” means a food product that is one of the following: grown in this state; produced from animals kept in the state; or primarily derived from food products that are grown in this state or produced from animals kept in this state.
- 4) DATCP recommends clarifying Section 4. 93.49 (2) (b)-(br). As written, DATCP assumes that council staff will provide communication and coordination efforts to get information to relevant entities and will not provide technical assistance or do actual tracking activities. DATCP needs clarification if this assumption is correct.
- 5) DATCP recommends striking Section 4. 93.49 (2) (i): “Set annual goals for the purchase of local food products by residents of this state and evaluate progress toward meeting the goals.” This would require a survey and tracking system that is not in existence and the resources needed far outweigh the benefits gained.

Thank you for the opportunity to provide comments regarding AB782.



**United States
Department of
Agriculture**

Food and
Nutrition
Service

3101 Park
Center Drive
Alexandria, VA
22302-1500

DATE: November 13, 2009

MEMO CODE: SP 08-2010 CACFP 05-2010 SFSP 06-2010

SUBJECT: Geographic Preference for the Procurement of Unprocessed
Agricultural Products in the Child Nutrition Programs

TO: Regional Directors
Special Nutrition Programs
All Regions

State Agencies
Child Nutrition Programs
All States

The purpose of this memorandum is to update the definition of what is considered “unprocessed” for the purposes of applying the optional geographic preference for procurement in the Child Nutrition Programs.

Section 4302 of Public Law 110-246, the Food, Conservation, and Energy Act of 2008, amended section 9(j) of the Richard B. Russell National School Lunch Act (NSLA) to allow institutions receiving funds through the Child Nutrition Programs to apply an optional geographic preference in the procurement of unprocessed locally grown or locally raised agricultural products. This provision applies to operators of all of the Child Nutrition Programs, including the National School Lunch Program, School Breakfast Program, Fresh Fruit and Vegetable Program, Special Milk Program, Child and Adult Care Food Program and Summer Food Service Program, as well as to purchases made for these programs by the Department of Defense Fresh Program. The law also applies to State Agencies making purchases on behalf of local agencies under any of the aforementioned Child Nutrition Programs.

This statutory provision was implemented by policy memorandum SP 30-2008, *Applying Geographic Preferences in Procurements for the Child Nutrition Programs* (July 9, 2008), as well as SP 08-2009 *Procurement Questions* (January 9, 2009) and SP 28-2009 *Procurement Questions* (July 22, 2009). These initial FNS guidance documents specified that the geographic procurement preference option may only be applied to the procurement of unprocessed agricultural products which are locally grown and locally raised and that have not been cooked, seasoned, frozen, canned, or combined with any other products, or have not been chopped, cut, diced or sliced.

After observing the impact of the Agency interpretation of the term “unprocessed” during the past year, we determined that our initial guidance was unnecessarily restrictive and had the potential to prevent participating Child Nutrition Program operators from receiving locally grown or raised products in a usable form. Accordingly, we recently

Regional Directors

Page 2

updated our initial guidance to add that unprocessed agricultural products that have been chopped, cut, sliced, diced or shucked do meet the meaning of the term “unprocessed” as intended by the statute.

At this time, we are further amending the previous guidelines regarding what is to be considered to be “unprocessed locally grown or locally raised agricultural products” when applying the geographic procurement preference option. In our view, for purposes of applying a geographic procurement preference in the Child Nutrition Programs, “unprocessed agricultural products” means only those agricultural products that retain their inherent character. The effects of the following handling and preservation techniques shall **not** be considered as changing an agricultural product into a product of a different inherent character: cooling, refrigerating, freezing; size adjustment through size reduction made by peeling, slicing, dicing, cutting, chopping, shucking, and grinding; drying/dehydration; washing; the application of high water pressure or “cold pasteurization”; packaging (such as placing eggs in cartons) and vacuum packing and bagging (such as placing vegetables in bags); butchering livestock, fish and poultry; and the pasteurization of milk.

We are drafting a proposed rule to address the geographic preference provision. The definition set forth in this memorandum will remain in effect until a final rule becomes effective.

Please disseminate this information to all Child Nutrition Program operators as soon as possible. State agencies should contact the regional offices if they have questions about this memorandum. Regional offices may contact the Child Nutrition Division, School Programs Section, for additional information.

Original Signed

Cynthia Long
Director
Child Nutrition Division



**United States
Department of
Agriculture**

Food and
Nutrition
Service

3101 Park
Center Drive
Alexandria, VA
22302-1500

MEMO CODE: SP 30-2008

DATE: July 9, 2008

SUBJECT: Applying Geographic Preferences in Procurements for the
Child Nutrition Programs

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

This memorandum provides information on a provision of the recently enacted Food, Conservation, and Energy Act of 2008 (P.L. 110-246) that applies to procurements in the Child Nutrition Programs. Section 4302 of P.L. 110-246 amended section 9(j) of the Richard B. Russell National School Lunch Act (NSLA) to require the Secretary of Agriculture to encourage institutions operating the Child Nutrition Programs to purchase unprocessed locally grown and locally raised agricultural products.

As amended, effective October 1, 2008, the NSLA allows institutions receiving funds through the Child Nutrition Programs to apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. This applies to operators of all of the Child Nutrition Programs, including the National School Lunch Program, School Breakfast Program, Fresh Fruit and Vegetable Program, Special Milk Program, Child and Adult Care Food Program, and Summer Food Service Program, as well as to purchases of fresh produce for these programs by the Department of Defense.

The law also applies to State Agencies which are making purchases for any of the aforementioned Child Nutrition Programs. While the statute permits institutions to apply a geographic preference to the maximum extent practicable and appropriate, it does not require institutions to purchase locally grown and locally raised agricultural products, or to apply a geographic preference in their procurements of these products. Moreover, States cannot mandate through law or policy that institutions apply a geographic preference when conducting these procurements, because the NSLA grants this authority directly to the institutions.

The institution responsible for the procurement has the discretion to determine whether and how a geographic preference meets its needs. Additionally, the procuring institution

Applying Geographic Preferences in Procurements for the Child Nutrition Programs
Page 2

may define the area for any geographic preference (e.g., State, county, region, etc.). Geographic preference may only be applied to the procurement of unprocessed agricultural products which are locally grown and locally raised, and that have not been cooked, seasoned, frozen, canned, or combined with any other products. As specified in the Joint Explanatory Statement of the Committee of Conference, the Managers of the legislation used the term “unprocessed” to “preclude the use of geographic preference for agricultural products that have significant value added components. The Managers do not intend to preclude de minimis handling and preparation such as might be necessary to present an agricultural product to a school food authority in a useable form, such as washing vegetables, bagging greens, butchering livestock and poultry, pasteurizing milk, and putting eggs in a carton.” (Joint Explanatory Statement, p.107). Additionally, using a minimal amount of preservatives on locally grown produce may be needed for the purpose of preventing spoilage and would be acceptable. It is also important to note that all milk served in the Child Nutrition Programs must be pasteurized and meet State and local standards. Pasteurized milk is the only dairy product for which geographic preference may be applied.

While a geographic preference may be used to encourage the purchase of locally grown and locally raised products by enabling an institution to grant an advantage to local growers, this provision does not eliminate the requirement for procurements to be conducted in a manner that allows for free and open competition, consistent with the purchasing institution’s responsibility to be responsible stewards of federal funds.

State Agencies that have questions may contact their regional offices. Regions may contact Lynn Rodgers-Kuperman or Jaelyn Kupcha.

Original Signed

CYNTHIA A. LONG
Director
Child Nutrition Division



United States
Department of
Agriculture

Food and
Nutrition
Service

3101 Park
Center Drive
Alexandria, VA
22302-1500

MEMO CODE: SP 28-2009

DATE: July 22, 2009

SUBJECT: Procurement Questions

TO: Regional Directors
Child Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

Please be aware that the procurement questions from January 9, 2009 (SP 08-2009) have been revised. This new set of procurement Q&As supersedes the previous set and contains two additional Q&As for clarification on FSMC-related contracts. These Q&As also clarify two prior memos from 2005 containing related questions; the links to these memos are provided in the first Q&A.

Original Signed

Cynthia Long
Director
Child Nutrition Division

Enclosure

FSMC CONTRACTS

Q: May a food service management company (FSMC) have a role in the procurement of a technology system for a school food authority (SFA) if the FSMC has a business interest or corporate relationship in one or more technology companies which might compete in the procurement?

A: Yes, in some circumstances an FSMC could have a role in the procurement by an SFA as described. We first responded to this type of procurement question in a May 24, 2005 and a July 14, 2005 memorandum to Regional Directors. See below:

<http://www.fns.usda.gov/cnd/governance/Policy-Memos/2005/2005-05-24.pdf>

<http://www.fns.usda.gov/cnd/governance/Policy-Memos/2005/2005-07-05.pdf>

In a question from the July 2005 memo, we discussed a scenario in which an SFA sought to amend an existing contract with an FSMC to add a new deliverable such as a point of service system. In this current question, the procurement is being designed prior to solicitation. Below are two examples of circumstances in which an FSMC could have a role in the procurement of an SFA's point of service system:

1. *An SFA structures its solicitation for goods and services to include both the services of an FSMC and a point of service system.*

This is allowable if the solicitation clarifies that the point of service system would be used at the same time and during the duration of the SFA and FSMC contract and that the SFA would take no ownership interest or option in the point of service system procured. The solicitation would allow all respondents the same opportunity to bid/offer on both the FSMC services and the point of service system. Depending upon the solicitation, the FSMC could provide their own system or respond using the system of a preferred provider with which they may have a pre-existing relationship.

In this scenario, because the SFA would not "own" the point of service system, it is essential to anticipate how to terminate agreements and retain open competition.

2. *After contract award, the SFA requests that the successful FSMC provide the additional service of procuring a point of service system for the SFA.*

This is allowable as long as the original solicitation included among the duties for the successful FSMC to act as the purchasing agent for the SFA. The FSMC may procure a point of service system for the SFA even if the original solicitation did not identify this specific procurement responsibility, as long as the contract identified the FSMC as the purchasing agent for the SFA. Pursuant to applicable program requirements, including those found at 7 CFR Parts 210 and 3016, the FSMC would undertake procurement of a point of service system as the SFA's agent.

All SFA procurements using federal funds are to be conducted with full and open competition. As noted in the July 2005 memorandum, Departmental regulations at 7 CFR 3016 prohibit the participation of an employee, officer or agent in the award or administration of a contract (this includes developing or drafting specifications, requirements, statements of work, invitations for bids, requests for proposals, contract terms and conditions or other documents for use by a grantee or subgrantee in conducting a procurement).

Please note that even if an FSMC's services have been properly procured and the scope of services include acting as the SFA's purchasing agent, the FSMC and its subsidiary may not submit a bid or offer in response to a solicitation for a technology system. In this situation where the successful FSMC has a business interest in or a corporate relationship with a point of service system provider, that provider may not be deemed a responsive bidder on the procurement administered by the FSMC, as this would create a conflict of interest. Though these entities with whom the FSMC has a business interest cannot bid, the FSMC may still act as the procurement agent for the SFA.

Q: Is the SFA liable if reports and documents, used in support of meal claims and prepared by the FSMC, are determined to be inaccurate?

A: Program regulations at 7 CFR 210.16(a)(5) require that an SFA contracting with an FSMC shall “[r]etain signature authority on the State agency-school food authority agreement, free and reduced price policy statements and **claims**” (emphasis supplied). Pursuant to 7 CFR 210.16(c)(1), under its contract with an SFA, an FSMC must maintain records needed by the SFA in submitting its Claim for Reimbursement required by 7 CFR 210.15(a)(1) and must report that information to the SFA at least monthly. In accordance with program regulations at 7 CFR 210.3(d) and 210.9(b)(8), an SFA is responsible for the all aspects of program management.

The SFA is responsible for having its own official review, and analyzing and signing the Claim for Reimbursement. In the event that there is a “failure to submit accurate claims [it] will result in the recovery of an overclaim and may result in the withholding of payments, suspension or termination” of the SFA's program participation [7 CFR 210.9(b)(8).]

Recognizing that all contracts—including small purchase acquisition contracts—may provide for legal and financial remedies for nonperformance, we understand that some SFAs include in their contracts with FSMCs a provision requiring that the SFA be made whole for any losses resulting from overclaims based on inaccurate information provided by the FSMC. USDA regulations do not prohibit such provisions, and it is the responsibility of the SFA to enforce this provision when included in the contract.

LOCAL PURCHASING

Q: According to the new Farm Bill regulations, institutions receiving funds through the Child Nutrition Programs may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. Does this mean competition does not need to occur and schools can simply pick a farmer to provide them with fresh, unprocessed vegetables?

A: No. The most important principle to a good procurement is that it is competitive and allows for free and open competition. An institution must still get quotes from several farmers when procuring unprocessed locally grown or locally raised agricultural products, so that competitors have an opportunity to compete for the bid. The way in which a geographic preference is applied could depend on whether the procurement method is informal or formal. If informal, i.e. falling below the small purchase threshold, a school food authority (SFA) may simply want to approach approximately 3-4 local producers and obtain price quotes. Competition is ensured by developing a solicitation that contains criteria which all the respondents will be subject to. If the procurement exceeds the small purchase threshold, a formal procurement method must be used which would involve the sealed bidding process (i.e. IFB) or the competitive negotiation process (i.e. RFP). This would entail public notification of the solicitation; however, when procuring locally unprocessed agricultural products the notification may be focused on the locale in which the school is situated as a criteria of the solicitation. In a situation where the solicitation for locally unprocessed agricultural products is in fact open to offerors beyond the local area, a way in which to apply a geographic preference is to grant preference points to the local farmers who respond to the solicitation.

Q: The Joint Explanatory Statement accompanying the new Farm Bill legislation states that de minimis handling and preparation might be necessary to present an agricultural product to a school food authority in a useable form, such as washing vegetables, bagging greens, butchering livestock and poultry, pasteurizing milk, and putting eggs in a carton. Additionally, consistent with FNS guidance, geographic preference may only be applied to the procurement of unprocessed agricultural products which are locally grown and locally raised, and that have not been cooked, seasoned, frozen, canned, or combined with any other products. Does produce that has been chopped or cut fall into the category of “minimal handling and preparation necessary to present in a useable form?”

A: No. De minimis handling does not include chopped, cut, or diced products and therefore geographic preference may not be applied to agricultural products that have been chopped, cut, sliced, or diced.

Q: Is processing meat into a hamburger patty allowed under this rule?

A: No. Grinding meat into a hamburger is considered “processing” and therefore geographic preference may not be applied to this product. Livestock and poultry can only be butchered in order to still be considered “unprocessed”.

Q: According to the new Farm Bill regulations, institutions receiving funds through the Child Nutrition Programs may apply a geographic preference when procuring unprocessed *locally* grown or raised agricultural products. How is “local” defined? For example, could a school only

accept bids/offers for unprocessed agricultural products from local farmers within a 50 mile radius?

A: Due to the geographic diversity in each state, the institution responsible for the procurement has the discretion to define the area for any geographic preference (e.g., State, county, region, etc.). However, it is important to keep in mind that local preference should not be defined in a way that unnecessarily limits competition.

BUY AMERICAN

Q: Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336) added a Buy American provision, Section 12(n) of the NSLA (42 USC 1760(n)) requiring that a school food authority, to the maximum extent practicable, purchases domestic commodities or products. Does this provision extend to other products like paper plates, equipment, or software?

A: No. The Buy American provision applies to domestic commodities or products, meaning an agricultural commodity that is produced in the United States, and a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

Q: A report accompanying the Buy American provision also states that a food product processed in the United States “substantially” using agricultural commodities produced in the United States means that over 51% of the final processed product consists of agricultural commodities that were grown domestically. Should the packaging of a product be factored in as a portion of this final processed product?

A: No. The packaging of a product is not included in the requirement that over 51% of the final processed product consists of domestic agricultural commodities.

TRANSFERRING EQUIPMENT

Q: A new charter school in a district is starting its operations using a public school building; however, the district stripped the building of all food equipment, desks and chairs, etc. The State would like to survey other districts in the area in search of surplus equipment used in connection with other Federal programs to ensure the charter school is able to provide meals under the National School Lunch (NSLP) and School Breakfast Programs (SBP). The charter school does have an agreement with the State Agency to participate in the programs provided they get the equipment. Is it permissible for the charter school to receive surplus equipment that is transferred from the public schools?

A: If the charter school plans to participate in both the NSLP and SBP, then yes, it is fine for the State to locate surplus equipment to ensure that the charter school can function and provide meals under these programs. According to 3016.32(c)(1), when the equipment is no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency. Therefore, since the charter school is



State of Wisconsin
2009 - 2010 LEGISLATURE

50324/P1
LRB 4290/1
RCT&CMH:kjf:md

Assembly substitute amendment

to **2009 ASSEMBLY BILL 782**

TODAY if possible (on Thursday)

February 26, 2010 - Introduced by Representatives GARTHWAITE, DANOU, BERCEAU, BLACK, CLARK, HILGENBERG, HRAYCHUCK, JORGENSEN, MASON, MOLEPSKE JR., STEINBRINK, TURNER, VRUWINK and YOUNG, cosponsored by Senators WIRCH, LASSA, SCHULTZ, TAYLOR and HANSEN. Referred to Committee on Rural Economic Development.

Regen

- 1 AN ACT to amend 16.75 (1) (a) 1.; and to create 15.137 (4), 16.75 (3p) and 93.49
- 2 of the statutes; relating to: encouraging the purchase of food produced in this
- 3 state, ^{and} creating goals and a preference in state procurement for food produced
- 4 in this state, and creating a council

Analysis by the Legislative Reference Bureau

Current law generally authorizes state agencies to contract for services under certain circumstances. With some exceptions, orders or contracts must be awarded to the lowest responsible bidder. This bill requires state entities, if their expenditures on food are greater than \$25,000 per fiscal year, to attempt to ensure that, before 2020, of the total amount expended for food per fiscal year, at least 10 percent is spent on food products that are grown, processed, packaged, and distributed in this state and to ensure that, beginning in 2020, of the total amount expended for food per fiscal year, at least 20 percent is spent on food products that are grown, processed, packaged, and distributed in this state. To accomplish these goals, this bill creates an exception to the lowest responsible bidder requirement by allowing state entities to accept a bid or proposal from a vendor selling local food products that is no more than 10 percent higher than the apparent low bid or most advantageous proposal.

This bill also creates a Local Food, Farms, and Jobs Council in the Department of Agriculture, Trade and Consumer Protection. It requires the council to undertake various activities designed to increase the in-state purchase of food products that are grown, processed, packaged, and distributed in this state. These activities include

created by the Department of Agriculture, Trade and Consumer Protection for the current Buy Local, Buy Wisconsin Program

ASSEMBLY BILL 782

encouraging entities that receive funding from this state and that spend more than \$25,000 per year on food for their students, residents, or clients to spend at least 10 percent of their food budgets on food grown, processed, packaged, and distributed in this state.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 15.137 (4) of the statutes is created to read:

2 15.137 (4) LOCAL FOOD, FARMS, AND JOBS COUNCIL. There is created in the
3 department of agriculture, trade and consumer protection a local food, farms, and
4 jobs council consisting of the following members:

5 (a) A representative of the department of agriculture, trade and consumer
6 protection appointed by the secretary of agriculture, trade and consumer protection.

7 (b) A representative of the department of commerce, appointed by the secretary
8 of commerce.

9 (c) A representative of the department of health services, appointed by the
10 secretary of health services.

11 (d) A representative of the department of children and family services,
12 appointed by the secretary of children and family services.

13 (e) A representative of the division of emergency management in the
14 department of military affairs, appointed by the administrator of the division of
15 emergency management.

16 (f) An agricultural specialist from the University of Wisconsin–Extension,
17 appointed by the chancellor of the University of Wisconsin–Extension.

18 (g) The following members nominated by the governor and with the advice and
19 consent of the senate appointed for 3–year terms:

ASSEMBLY BILL 782

- 1 1. One dairy producer.
- 2 2. One meat producer.
- 3 3. One vegetable producer.
- 4 4. One grain producer.
- 5 5. Four producers of specialty food crops or animals, such as fruit, herbs, and
- 6 fish, each producing a different specialty food crop or animal.
- 7 6. Two processors of local food products.
- 8 7. Two distributors of local food products.
- 9 8. One retailer of local food products.
- 10 9. One representative of consumers of local food products.
- 11 10. One chef specializing in the preparation of local food products.
- 12 11. Two representatives of municipalities actively involved in the promotion of
- 13 local food products.
- 14 12. Two representatives of farm organizations.
- 15 13. One representative of an entity that certifies foods as meeting standards
- 16 such as organic, biodynamic, kosher, or halal.
- 17 14. Three representatives of nonprofit educational organizations that support
- 18 the production, processing, distribution, and consumption of local food products.
- 19 15. Four representatives of community-based organizations that promote
- 20 access to local food products.
- 21 16. One representative of a philanthropic organization supporting the
- 22 production, processing, distribution, and consumption of local food products.

23

SECTION 2. 16.75 (1) (a) 1. of the statutes, as affected by 2009 Wisconsin Act

24

136 (Assembly Bill 2), is amended to read:

ASSEMBLY BILL 782

SECTION 2

1 16.75 (1) (a) 1. All orders awarded or contracts made by the department for all
2 materials, supplies, equipment, and contractual services to be provided to any
3 agency, except as otherwise provided in par. (c) and subs. (2), (2g), (2m), (3m), (3p),
4 (3t), (6), (7), (8), (9), (10e), and (10m) and ss. 16.705 (1r), 16.73 (4) (a), 16.751, 16.754,
5 16.964 (8), 50.05 (7) (f), 153.05 (2m) (a), and 287.15 (7), shall be awarded to the lowest
6 responsible bidder, taking into consideration life cycle cost estimates under sub.
7 (1m), when appropriate, the location of the agency, the quantities of the articles to
8 be supplied, their conformity with the specifications, and the purposes for which they
9 are required and the date of delivery.

10 **SECTION 3.** 16.75 (3p) of the statutes is created to read:

11 16.75 (3p) (a) In this subsection:

12 1. “Local food products” has the meaning given in s. 93.49 (1) (b).

13 2. “Purchasing agent” means the department, any designated purchasing
14 agent under s. 16.71, or any agency making purchases under s. 16.74.

15 (b) If a purchasing agent spends more than \$25,000 on food under this
16 subchapter per fiscal year, the purchasing agent shall attempt to ensure that, before
17 2020, at least 10 percent of the total amount expended for food products under this
18 subchapter per fiscal year is expended on local food products.

19 (c) If a purchasing agent spends more than \$25,000 on food under this
20 subchapter per fiscal year, the purchasing agent shall ensure that, beginning in
21 2020, at least 20 percent of the total amount expended for food products under this
22 subchapter per fiscal year is expended on local food products.

23 (d) A purchasing agent that is subject to the requirement under par. (b) or (c)
24 may purchase local food products from any entity submitting a qualified responsible
25 competitive bid that is no more than 10 percent higher than the apparent low bid or

ASSEMBLY BILL 782

1 competitive proposal that is no more than 10 percent higher than the most
2 advantageous offer.

Insert
3 S-2

SECTION 4. 93.49 of the statutes is created to read:

4 **93.49 Local food, farms, and jobs council.** (1) In this section:

5 (a) "Council" means the local food, farms, and jobs council appointed under
6 S. 93.45

6 (b) "Local food products" means food products that are grown, processed,
7 packaged, and distributed in this state. Insert S-7

8 (2) The council shall do all of the following:

9 (a) Encourage entities that receive funding from this state and that spend more
10 than \$25,000 per year on food for their students, residents, or clients, including
11 school districts, child care providers, and hospitals, to make expenditures for local
12 food products that equal at least 10 percent of their total expenditures for food
13 products by 2020.

14 (b) Assist entities that receive funding from this state to meet the goals under
15 par. (a) and to track and report purchases of local food products. Provide information to to assist the entities

16 (br) Assist state agencies to meet the goal under 16.75 (3p) (b) and to comply
17 with the requirement under s. 16.75 (3p) (c) and to track and report purchases of local
18 food products. provide information to assist the state agencies to

19 (c) Assist farmers and others in this state to identify and secure financing and
20 equipment to begin, maintain, and expand projects to process, package, and
21 distribute local food products.

22 (d) Facilitate the building of aggregation, processing, storage, packaging, and
23 distribution facilities needed to bring local food products to local and other markets.

ASSEMBLY BILL 782**SECTION 4**

1 (e) Support and encourage the expansion of programs that recruit, train, and
2 provide technical assistance to farmers and others in this state to increase the
3 availability of local food products.

4 (f) Work with federal, state, and local agencies, educational institutions, trade
5 organizations, and community-based organizations to coordinate policies,
6 initiatives, and procedures that promote the production and consumption of local
7 food products.

8 (g) Work with federal, state, and local agencies, including public health
9 agencies, and the attorney general to seek the elimination or modification of rules
10 and regulations that hinder the production, storage, distribution, and marketing of
11 local food products.

12 (h) Encourage federal, state, and local entities to allow the use of public lands
13 for growing food crops for processing, packaging, and distribution in this state.

14 (i) Set annual goals for the purchase of local food products by residents of this
15 state and evaluate progress toward meeting the goals.

16 (j) Initiate and facilitate public awareness activities concerning the economic
17 benefits of the production and consumption of local food products.

SECTION 5. Nonstatutory provisions.

18 (1) INITIAL TERMS OF MEMBERS OF COUNCIL. Notwithstanding the length of terms
19 specified under section 15.137 (4) (g) of the statutes, as created by this act, the
20 governor shall appoint initial members of the local food, farms, and jobs council as
21 follows:
22

23 (a) The members appointed under section 15.137 (4) (g) 1., 4., 8., and 16. and
24 one of the members appointed under section 15.137 (4) (g) 5., 6., 11., 12., 14., and 15.
25 for terms ending on July 1, 2012.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0324/P1dn
RCT...*gf*

Date

Jon Wolkomir:

This is a preliminary version of the substitute amendment for AB 782. As a preliminary version, the draft is not jacketed, so there will be no need to return the stripes if changes need to be made.

As we discussed, there is no statutory requirement for DATCP to appoint a council to advise it on the Buy Local, Buy Wisconsin Program, although DATCP appears to have done so using the authority of s. 15.04 (1)(c). In order to refer to, and assign responsibilities to, the current council, this draft requires DATCP to have a council to advise it on the Buy Local, Buy Wisconsin Program.

This draft modifies the definition of "local food products." Please note that "food products" is defined in s. 93.01(6). ✓

Please do not hesitate to ask any questions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

1 **Insert 5-7**

2 ~~not~~ , produced from animals kept in this state, or primarily derived from food
3 products that are grown in this state or produced from animals kept in this state
4

5 **Insert 7-7**

6 **SECTION 2. Initial applicability.**

7 (1) The treatment of section 16.75 (3p) (d) of the statutes first applies to bids
8 solicited on the effective date of this subsection.

1 **Insert A**

no # identify a geographic preference area that would help them achieve these goals
and to award the bid to the lowest responsible bidder submitting a bid from that area

3 **Insert 5-2** (no paragraph)

no # determine a geographic preference area that would aid the achievement of the
goal under par. (b) or of the requirement under par. (c) and that, if bids were solicited
only in the geographic preference area, would not unnecessarily limit the open and
competitive bidding process. The purchasing agent may award the order or contract
to the lowest responsible bidder submitting a bid from the geographic preference
area.

10 **SECTION 1.** 93.45 of the statutes is amended to read:

11 **93.45 Buy local, buy Wisconsin.** The department shall conduct a program
12 to increase awareness and consumption of locally produced foods and related
13 products and to increase the production and improve the distribution of foods and
14 related products for local consumption. In the program, the department shall
15 emphasize the development of regional food and cultural tourism trails and the
16 development of regional food systems through activities such as creating or
17 expanding facilities for the processing and distribution of food for local consumption;
18 creating or supporting networks of producers; and strengthening connections
19 between producers, retailers, institutions, and consumers and nearby producers.
20 The department shall appoint a council under s. 15.04 (1) (c) to advise the
21 department on the administration of this section and s. 93.48.

ASSEMBLY BILL 782

1 (b) The members appointed under section 15.137 (4) (g) 2., 9., and 13., one of
2 the members appointed under section 15.137 (4) (g) 7., 11., 14. and 15., and 2 of the
3 members appointed under section 15.137 (4) (g) 5. for terms ending on July 1, 2013.

4 (c) The members appointed under section 15.137 (4) (g) 3. and 10., one of the
5 members appointed under section 15.137 (4) (g) 5., 6., 7., 12., and 14., and 2 of the
6 members appointed under section 15.137 (4) (g) 15. for terms ending on July 1, 2014.

7 (END)

INS 7-7

D-Note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0324/P1dn
RCT:kjf:rs

March 10, 2010

Jon Wolkomir:

This is a preliminary version of the substitute amendment for AB 782. As a preliminary version, the draft is not jacketed, so there will be no need to return the stripes if changes need to be made.

As we discussed, there is no statutory requirement for DATCP to appoint a council to advise it on the Buy Local, Buy Wisconsin Program, although DATCP appears to have done so using the authority of s. 15.04 (1) (c). In order to refer to, and assign responsibilities to, the current council, this draft requires DATCP to have a council to advise it on the Buy Local, Buy Wisconsin Program.

This draft modifies the definition of "local food products." Please note that "food products" is defined in s. 93.01 (6).

Please do not hesitate to ask any questions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.wisconsin.gov

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

50324/P1

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

3/19- Message From Lance - jacket as is.

ACT



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBs0324/P1
RCT&CMH:kjf:rs

Today

Mr

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

ASSEMBLY SUBSTITUTE AMENDMENT,

TO 2009 ASSEMBLY BILL 782

No changes

Regen

1 AN ACT *to amend* 16.75 (1) (a) 1. and 93.45; and *to create* 16.75 (3p) and 93.49
2 of the statutes; **relating to:** encouraging the purchase of food produced in this
3 state and creating goals and a preference in state procurement for food
4 produced in this state.

Analysis by the Legislative Reference Bureau

Current law generally authorizes state agencies to contract for services under certain circumstances. With some exceptions, orders or contracts must be awarded to the lowest responsible bidder from any area. This bill requires state entities, if their expenditures on food are greater than \$25,000 per fiscal year, to attempt to ensure that, before 2020, of the total amount expended for food per fiscal year, at least 10 percent is spent on food products that are grown, processed, packaged, and distributed in this state and to ensure that, beginning in 2020, of the total amount expended for food per fiscal year, at least 20 percent is spent on food products that are grown, processed, packaged, and distributed in this state. This bill modifies the lowest responsible bidder requirement by allowing state entities to identify a geographic preference area that would help them achieve these goals and to award the bid to the lowest responsible bidder submitting a bid from that area.

This bill requires the council created by the Department of Agriculture, Trade and Consumer Protection for the current Buy Local, Buy Wisconsin Program to undertake various activities designed to increase the in-state purchase of food products that are grown, processed, packaged, and distributed in this state. These activities include encouraging entities that receive funding from this state and that spend more than \$25,000 per year on food for their students, residents, or clients to spend at least 10 percent of their food budgets on food grown, processed, packaged, and distributed in this state.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 16.75 (1) (a) 1. of the statutes, as affected by 2009 Wisconsin Act 136,
2 is amended to read:

3 16.75 (1) (a) 1. All orders awarded or contracts made by the department for all
4 materials, supplies, equipment, and contractual services to be provided to any
5 agency, except as otherwise provided in par. (c) and subs. (2), (2g), (2m), (3m), (3p),
6 (3t), (6), (7), (8), (9), (10e), and (10m) and ss. 16.705 (1r), 16.73 (4) (a), 16.751, 16.754,
7 16.964 (8), 50.05 (7) (f), 153.05 (2m) (a), and 287.15 (7), shall be awarded to the lowest
8 responsible bidder, taking into consideration life cycle cost estimates under sub.
9 (1m), when appropriate, the location of the agency, the quantities of the articles to
10 be supplied, their conformity with the specifications, and the purposes for which they
11 are required and the date of delivery.

12 **SECTION 2.** 16.75 (3p) of the statutes is created to read:

13 16.75 (3p) (a) In this subsection:

14 1. "Local food products" has the meaning given in s. 93.49 (1) (b).

15 2. "Purchasing agent" means the department, any designated purchasing
16 agent under s. 16.71, or any agency making purchases under s. 16.74.

1 (b) If a purchasing agent spends more than \$25,000 on food under this
2 subchapter per fiscal year, the purchasing agent shall attempt to ensure that, before
3 2020, at least 10 percent of the total amount expended for food products under this
4 subchapter per fiscal year is expended on local food products.

5 (c) If a purchasing agent spends more than \$25,000 on food under this
6 subchapter per fiscal year, the purchasing agent shall ensure that, beginning in
7 2020, at least 20 percent of the total amount expended for food products under this
8 subchapter per fiscal year is expended on local food products.

9 (d) A purchasing agent that is subject to par. (b) or (c) may determine a
10 geographic preference area that would aid the achievement of the goal under par. (b)
11 or of the requirement under par. (c) and that, if bids were solicited only in the
12 geographic preference area, would not unnecessarily limit the open and competitive
13 bidding process. The purchasing agent may award the order or contract to the lowest
14 responsible bidder submitting a bid from the geographic preference area.

15 **SECTION 3.** 93.45 of the statutes is amended to read:

16 **93.45 Buy local, buy Wisconsin.** The department shall conduct a program
17 to increase awareness and consumption of locally produced foods and related
18 products and to increase the production and improve the distribution of foods and
19 related products for local consumption. In the program, the department shall
20 emphasize the development of regional food and cultural tourism trails and the
21 development of regional food systems through activities such as creating or
22 expanding facilities for the processing and distribution of food for local consumption;
23 creating or supporting networks of producers; and strengthening connections
24 between producers, retailers, institutions, and consumers and nearby producers.

1 The department shall appoint a council under s. 15.04 (1) (c) to advise the
2 department on the administration of this section and s. 93.48.

3 SECTION 4. 93.49 of the statutes is created to read:

4 **93.49 Local food, farms, and jobs council.** (1) In this section:

5 (a) "Council" means the council appointed under s. 93.45.

6 (b) "Local food products" means food products that are grown in this state,
7 produced from animals kept in this state, or primarily derived from food products
8 that are grown in this state or produced from animals kept in this state.

9 (2) The council shall do all of the following:

10 (a) Encourage entities that receive funding from this state and that spend more
11 than \$25,000 per year on food for their students, residents, or clients, including
12 school districts, child care providers, and hospitals, to make expenditures for local
13 food products that equal at least 10 percent of their total expenditures for food
14 products by 2020.

15 (b) Provide information to entities that receive funding from this state to assist
16 the entities to meet the goals under par. (a) and to track and report purchases of local
17 food products.

18 (br) Provide information to state agencies to assist the state agencies to meet
19 the goal under 16.75 (3p) (b) and to comply with the requirement under s. 16.75 (3p)
20 (c) and to track and report purchases of local food products.

21 (c) Assist farmers and others in this state to identify and secure financing and
22 equipment to begin, maintain, and expand projects to process, package, and
23 distribute local food products.

24 (d) Facilitate the building of aggregation, processing, storage, packaging, and
25 distribution facilities needed to bring local food products to local and other markets.

Barman, Mike

From: Frederick, Caitlin - DOA [caitlin.frederick@wisconsin.gov]
Sent: Wednesday, March 24, 2010 9:27 AM
To: Nelson, Linda S - DOA
Cc: Barman, Mike
Subject: AB 782

Rep. Garthwaite's office (6-1170) called me regarding a fiscal estimate (after Cindy passed the person to me instead of you).

They are awaiting an update fiscal estimate based on AB 782. A substitute amendment was given to the bill. I don't see anything in FES or the e-mails indicating an updated FE is requested, but apparently there should be.

Curiously the individual from Garthwaite's office indicated that DATCP had prepared an original estimate (which prompted the sub), but according to FES it is still at the approver level.

*Caitlin Morgan Frederick
Executive Policy and Budget Analyst-Senior
State of Wisconsin Division of Budget & Finance
101 E. Wilson, 10th fl
Madison, WI 53702
608-266-8777*



ACTIVE

LRB Number: 09s0324/1
Introduction Number: ASA1-AB782
Comment: Per Joint Rule 48 (2) ... "Original" FE by DATCP requested on ASA1-AB782
Request Date: 3/25/2010 9:44:45 AM
Description:
Subject: PUBLIC DRAFT/BILL and Assignments

[Edit the Request](#)

Draft/Bill: Not attached