



PROCUREMENT ROADMAP

TABLE OF CONTENTS

The Problems & Progressive Local Solutions	1
Available Local Levers & Targets for Reform	2
Current Reforms & Tools to Fight for Them	3
Taking it to the Next Level	5
Allies, Comrades, & Helpers	6

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This Procurement Policy Roadmap was prepared by ProGov21, written Walker Kahn, Maria Manansala, Alina Yazek



ProGov21 is a shared resource for progressive local policy makers and advocates alike. Operated and maintained by COWS, a national think-and-do tank based at the University of Wisconsin-Madison, ProGov21 offers a fully searchable digital library of progressive policies, practices, and other resources for 21st century local government.

The Problems & Progressive Local Solutions

All counties, cities, and towns spend money purchasing goods and services. In the most recent year for which we have good records, 2019, local governments in the United States raised more than \$1.2 trillion dollars in revenue and spent more than \$2.0 trillion procuring goods and services, or roughly 10 percent of the U.S. economy. (See Table 1. State and Local Government Finances by Level of Government and by State: 2019).

Local governments can establish policies to use this spending, or *procurement*, to encourage some sorts of business practices or others and thereby shape the direction of their local development. They can, for example, use their spending to reward more sustainable, worker-friendly, or more transparent and thus publicly accountable business practices, or to encourage business models more benign than the for-profit private corporation.

Courts have long held that governments when behaving as market actors, are free to set terms and conditions when spending their locally-raised revenue (see *Building and Constr. Trades Council v. Associated Builders and Contractors*, 113 S. Ct. 1190 (1993)). At least in theory, they have the same sovereignty as other consumers. And most communities set some standards on how they will use this public money.



Unfortunately, local government power to set procurement standards has increasingly been limited by overriding “preemptive” law from the federal governments and especially states. Particularly in recent years, with ever more determinedly pro-business legislators dominating state legislature, much of the traditional autonomy of local governments has been constrained

in procurement, along with other functions (see the ProGov21 Home Rule Roadmap for more). Project Labor Agreements which allow local governments to set safety and compensation standards on municipal projects, have recently become a target: of the 21 states that preempt PLAs, only two had these laws on the books prior to the year 2000, while the remaining 19 have been passed since 2011.

But not all is lost. Far from it. As the social consequences of America's distinctly predatory low-road capitalism—where firms profit from sweating labor, shedding responsibility for the environmental and other social costs they're producing, and then weakening public authority to clean up after them—become apparent, growing shares of the public and public-interest advocates, demand that the high-road alternative—in which firms profit by making higher quality goods and services, limiting their waste, and investing in competent and capable regulatory authority—be encouraged by local procurement.



Available Local Levers & Targets for Reform

Government procurement officers typically pay attention to only one type of comparative measure among potential vendors: the price of the service or product they're offering. High-road procurement, by contrast, centers on value to the community. That has led them to impose wage, compensation and environmental standards on vendors, favoring local vendors over distant ones.[1] While some might assume that higher prices lead local businesses to lose out on municipal procurement, this is not necessarily the case—frequently, local businesses simply lack the experience and resources necessary to succeed in the “long, difficult, and expensive” government contracting process. Giving local businesses preferences in the procurement process can encourage them to develop the capacity to engage in government contracting. In effect, it can be treated as an investment in community capacity

Many communities, for example, give preference to vendors that pay living wages, have equitable hiring and employment policies, and engage in worker-training and skill-certification programs. These types of employer policies are not only strongly associated with higher productivity but have positive community spillovers. Those better-paid and better-trained workers, for example, will have a lot more to contribute to demand for other

businesses (and thus more employment), tax revenues, and aggregate human capital.

Procurement policies should give preference to commercial enterprises that engage in environmentally sustainable business practice so that communities sustain and improve the value of their environmental resources. Local governments can do this by requiring procurement partners to account for products and projects' total lifetime cost (both economic and environmental). Other environmental issues to consider in procurement are energy and water efficiency, waste prevention, pollution and toxicity reduction, and the impact of packaging and transportation.

Any sensible local policy premises at least weak consensus on the value the relevant community wants its government to support, and identification of current risks to and opportunities for their realization. As applied to procurement policy, that means agreement that local government should not use its revenue to subsidize bad employer practices, or community inequality, or environmental devastation, or government corruption. With that agreed, the real project of mapping the existing community, and relations within it, with a view to identifying the vendors having these effects can begin, as well as the often harder but more satisfying one of targeting vendors whose behavior promises opposite effects, and then setting policy to eliminate reliance

on the first and encouragement of the second. Simple enough in theory. Of course, this is harder in practice. But the alternative to this effort is to let generally low-road market forces decide community fate.

Current Reforms & Tools to Fight for Them

Municipalities are already using their procurement policies to move to more high-road development. Portland's Sustainable Procurement Policy establishes baseline practices, such as reductions in greenhouse gas emissions, a baseline for all procurement contracts, and promotes suppliers' diversity and ethical business practices. The City of Phoenix's Sustainable Purchasing Policy requires full life cycle evaluation of materials and their economic and environmental impacts and mandates that suppliers use green products internally. The Progov21 database contains sustainable procurement toolkits, along with many other helpful documents.

Progov21 also has documents detailing best practices and examples for equitable procurement. Oakland passed an ordinance in 1998 that requiring companies and non-profits with service contracts with the city or benefit from city subsidies to pay workers living wage, provide 12 paid days off per year, and specifies that collective bargaining agreements may increase wages above what is established by the ordinance. Oakland also passed a Good Jobs Policy.

mandating that 50 percent of jobs associated with redevelopment of a decommissioned army base into a warehouse and logistics hub be reserved for workers hired from Oakland, 25 percent of the jobs be reserved for disadvantaged workers, limited the use of temporary workers in warehouses, and banned pre-screening for criminal records. Boston's [Executive Order Promoting Equity in Public Purchasing](#) identifies procurement opportunities that have historically not been available to firms with women and/or minority ownership and market such opportunities to these firms. It also establishes a broader inclusion and outreach plan for these businesses.

In many cases, small local businesses will need help developing their capacity to become viable procurement partners. Typically, this is accomplished by local governments partnering with outside agencies. [Tacoma, Minneapolis, and Houston](#) have all launched initiatives to help small local businesses take advantage of procurement opportunities. [Tacoma's Small Business Enterprise](#) program provides a 5% bid discount for bids by prime contractors that meet specifications for using local small businesses as subcontractors (helping those contractors achieve low-bid status). The city partners with outside agencies to provide training assisting help small businesses take advantage of the opportunities created by this policy. Similarly, [Minneapolis](#) procurement policy offers preferences to prime contractors, but requires specific commitments to small business



subcontractors at the time that a bid is submitted. [Houston's Build Up Houston program](#) offers an intensive 7-month training to prepare sub-contractors in the construction sector to become prime-contractors, emphasizing capacity building and bonding education.

[Progov21](#) contains asset mapping toolkits municipalities can use to

identify possible local partners. Preston City Council's [community mapping toolkit](#) introduces asset mapping. "[Mobilize Maine](#)" is a proactive approach to revitalizing the economy by identifying regional assets and creating economic development strategies based on that data. The UCLA Center for Health Policy Research [asset mapping toolkit](#) provides step-by-step instructions and offers examples and resources from across the country. Finally, Case Western University has an [asset map toolkit](#) that teaches you how to visualize your results with google maps.



Taking it to the Next Level

Municipalities must understand how their local procurement policies interact with state law and federal law to avoid preemption. Preemption occurs when state laws nullify a municipal ordinance or authority. Preemption issues vary by state; in some instances, local governments can draft legislation narrowly so that the local law achieves its purpose without being challenged by the State. Cities and counties can and should also pass such ordinances, wait until the State sues them, and then work towards a favorable settlement. Preemption laws can also be challenged in the courts, especially where the state constitution grants local governments a charter to govern as they see fit ("home rule states"). Such legal actions can focus on an entire law or on specific provisions that limit local control. Punitive preemption laws are especially vulnerable on the grounds of free speech, legislative immunity, and due process. [See the Progov21 Policy Roadmap on Home Rule for more](#) information.

Local governments can also [encourage anchor institutions to create with their own high-road procurement policies](#). Anchor institutions are large institutions or enterprises that are tied in their surrounding communities by their place-based capital investments in meeting some standing community need. Examples include hospitals, universities, and airports. Anchor institutions can commit to following the same procurement strategies detailed in this report.

Municipal governments and community groups have access to both carrots and sticks they can use to encourage anchor institutions to adopt high road procurement policies: they can incentivize the cooperation through proactive grantmaking, favorable zoning policies or variances, political pressure and legislative mandates, pressure from coalitions of community organizations and labor groups, and IRS community benefits requirements. However, municipal governments and communities must establish strong working relationships with anchor institutions for these policies to be effective. See Leveraging Anchor Institutions for Local Job Creation and Wealth Building and other resources on the ProGov21 database for more innovative ideas for partnering with anchor institutions to drive high-quality employment.

[1] Government spending at locally-owned vendors creates an economic multiplier effect that keeps money circulating in the local economy because they rely on local supply chains and local employees

Allies, Comrades, and Helpers

Responsible Purchasing Network (RPN)

RPN is an international network of buyers dedicated to socially responsible and environmentally sustainable purchasing.

The Sustainable Purchasing Leadership Council (SPLC)

SPLC links institutional purchasers with existing best-in-class guidance on sustainable purchasing.

The Institute For Local Self Reliance (ILSR)

ILSR has resources on building local community power, many of which highlight municipal procurement.

Femecomony

Femecomony offers a powerful toolkit for using government procurement to fight for gender equality.

We continue the conversation around this Finance & Procurement Roadmap on **ProGov21's Podcast**. Our latest episode features expert Jeremy Mohler from In The Public Interest.

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