

OSPI School Meal Programs Reference Sheet

Buy American Provision

The Buy American Provision requires sponsors of the National School Lunch Program (NSLP) and/or School Breakfast Program (SBP) to purchase domestic commodities and products.

Requirements

- Sponsors must purchase, to the maximum extent practicable, domestic commodities and products for use in the NSLP.
 - Domestic commodity or product:
 - An agricultural commodity produced in the United States (U.S.) *and*
 - A food product that is processed in the U.S. using the substantial agricultural commodities that are produced in the United States.
 - Substantial: Over 51% of the final processed product consists of agricultural commodities that were grown domestically.
- Applies to all entities that purchase on behalf of the LEA (i.e. group purchasing cooperatives, Food Service Management Companies etc.)
- Applies to all food/beverage products purchased using funds from the non-profit Food Service Account.
- Limited Exception (to be used as a last resort)
 - When a product is not produced or manufactured in the U.S. in sufficient and reasonable quantities of a satisfactory quality.
 - Competitive bids reveal the cost of a U.S. product are significantly higher than the foreign product.
 - Retain documentation to support the need to utilize exception.
- Products from Guam, American Samoa, Virgin Islands, Puerto Rico and the Northern Mariana Islands are allowed under this provision as territories of the United States.

Before utilizing an exception to the Buy American Provision, consider:

- Are there other domestic sources for this product?
- Is there a domestic product that could be substituted, if the non-domestic product is less expensive (i.e. substitute domestic apples for non-domestic pears)
- Should I be soliciting bids at a different time of year? Could I contract earlier or later in the season for better prices or availability?



Steps to ensure compliance with the Buy American Provision

1. Ensure product packaging and/or delivery invoice/receipts identifies the country of origin.
2. Include a "Buy American Clause" in all product specifications, bid solicitations, requests for proposals (RFPs), purchase orders and other procurement documents.
 - Example: *By submitting and signing the proposal/bid, the bidder acknowledges and certifies that his/her company complies with the Buy American provision that the food delivered is of domestic origin or the product is substantially produced in the United States. For these purposes, substantially means over 51% of the processed food is from U.S. produced products. If the bidder is unable to certify compliance with the Buy American Provision, the bidder shall state this in his/her response and provide an explanation as to why it cannot certify compliance."*
3. Conduct periodic reviews of stock on hand to ensure products comply with the Buy American Provision

Reference

- [CFR 210.21\(d\)](#)
- [SP38-2017](#) Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program

Resource

- [OSPI CNS Procurement web page](#)
- [Agricultural Marketing Service \(AMS\)](#)

Acronym Reference

- CFR – Code of Federal Regulations
- LEA – Local Education Agency
- NSLP – National School Lunch Program
- OSPI – Office of Superintendent of Public Instruction
- USDA – United States Department of Agriculture