

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 to the maximum extent practicable.

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 Local Education Agency (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 Exceptions to the Buy American Provision

- Two limited exceptions when non-domestic foods may be purchased by LEAs are as follows:
 - The product is listed on the [Federal Acquisitions Regulations \(FAR\) Non-Available Articles List](#) and/or is not produced in sufficient and reasonably available quantities of satisfactory quality.
 - Competitive bids reveal the cost of a U.S. product are significantly higher than the foreign product.
- LEAs must maintain documentation to demonstrate the use of exceptions.
 - Documentation is not needed for items found on the FAR Non-Available Articles list.
- Non-domestic food purchases each school year must not exceed the following caps by the established deadline:

Year	Non-Domestic Food Purchase Cap
2025-26	≤10% of total annual commercial food costs
2028-29	≤8% of total annual commercial food costs
2031-32	≤5% of total annual commercial food costs



Considerations

- 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. Establish a Buy American Provision monitoring procedure to include documenting all limited exceptions and conducting periodic on-site reviews of stock on hand to ensure products comply with the Buy American Provision.
4. Document all exceptions to the Buy American Provision on the [Buy American Provision Exceptions Tracking Form](#).
5. Determine whether non-domestic food costs exceed the maximum percentage allowed.
 - If out of compliance, develop a corrective action plan to increase purchase of domestic foods.

Reference

- [7 CFR 210.21\(d\)](#)
- [SP 23-2024](#): Buy American Provision Related to the Final Rule

Resource

- [OSPI CNS Procurement webpage](#)
- [Agricultural Marketing Service \(AMS\)](#)
- [Buy American Provision Exceptions Tracking Form](#)

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