

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.
 - A Domestic commodity or product is:
 - An agricultural commodity produced in the United States (U.S.) **and**
 - A food product that is processed in the United States using **substantial** agricultural commodities.
 - 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 meal components purchased using funds from the non-profit Food Service Account.
- ✓ 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.
- ✓ 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.
 - When competitive quotes, bids, or proposals reveal the cost of a U.S. product is significantly higher than the foreign product.
 - Retain documentation to support the need to utilize exception.

OSPI CNS School Meal Programs Reference Sheet

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

- Are there other domestic sources for this product?
- Is there another domestic product that could be used, 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 identify 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.
 - *Examples:*
 - **For solicitations (BID or RFP):**
 - "The *District/State agency/Territory* participates in the National School Lunch Program and School Breakfast Program and is required to use the nonprofit food service funds, to the maximum extent practicable, to buy domestic commodities or products for Program meals. A 'domestic commodity or product' is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 CFR 210.21(d)."
 - **For Contracts (Include as Addendum to Solicitation):**
 - "*Vendor* 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.

OSPI CNS School Meal Programs Reference Sheet

Reference:

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

Resources:

- ✓ [OSPI CNS Procurement webpage](#)

Acronym Reference

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