Buy American Provision:

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Product Exception Worksheet

All commodities and products must be of domestic origin to the maximum extent practicable, as required by 7CFR Part 210.21 (d).

"Domestic commodity or product" means 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. (Substantially means over 51% from American products. Therefore, over 51% of the final processed product, by weight or volume, must consist of agricultural commodities that were grown domestically. Thus, for foods that are unprocessed, agricultural commodities must be domestic, and for foods that are processed, they must be processed domestically using domestic agricultural food components that are comprised of over 51% domestically grown items, by weight or volume.)

Limited Exceptions:

Exceptions to the Buy American provision are very limited; however, an alternative or exception may be approved upon request. To be considered for the alternative or exception, the request must be submitted in writing, by the vendor, for prior approval by the district, in advance of delivery.

Exceptions include:

1. The product is not produced or manufactures in the U.S in sufficient and reasonable available quantities of a satisfactory quality; or
2. Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.

Limited exceptions to the Buy American Provision allow for the purchase of products not meeting the “domestic” standard. Before utilizing an exception, alternatives must be considered:

1. Are there other domestic sources for this product?
2. Is there a domestic product that could be easily substituted, if the non-domestic product is less expensive?
3. Am I soliciting bids for this product at the best time of year? If I contracted earlier or later in the season, would prices and/or availability change?

To be considered for the alternative or exception, the request must be submitted in writing, from the vendor, to the school district designated official, in advance of delivery.  The request must include the:

1. Alternative substitute (s) that are domestic and meet the required specifications:
   1. Price of the domestic food alternative substitute (s); and
   2. Availability of the domestic alternative substitute (s) in relation to the quantity ordered.
2. Reason for exception:  limited/lack of availability or price (include price):
   1. Price of the domestic food product; and
   2. Price of the non-domestic product that meets the required specification of the domestic product.

Additional Notes:

Buy American requirements must be followed as found in 7 CFR 210.21(d) and USDA Memo SP38-2017. For all procurement transactions for food when funds are used from the nonprofit food service account, whether directly by an LEA or on its behalf, procurement transactions must comply with the Buy American Provision. The non-Federal entity must comply with Buy American in documented procurement procedures, the procurement plan, and all procurement solicitations and contracts. Include domestic requirements in bid specifications; contract monitoring; and verifying cost and availability of domestic and nondomestic foods.

Buy American Documentation Worksheet:

If using one of the exceptions, the LEA must keep back-up documentation justifying the use of the exceptions. The LEA may also utilize this worksheet to indicate the exception used, however the LEA must still keep the back-up documentation for compliance with the Buy American Provision. The LEA must not automatically allow an exception just because the domestic product is not available. If the LEA is using one of the exceptions, there is no requirement to request a waiver or approval from the State Agency in order to purchase a non-domestic product.

**Exceptions include:**

1. The product is not produced or manufactures in the U.S in sufficient and reasonable available quantities of a satisfactory quality; or

2. Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.

**Sample 1**

| **Date** | **Food Item Description** | **Country of Origin** | **Justification**  **(justification for use of non-domestic product)** |
| --- | --- | --- | --- |
| *8/15/18 to 5/24/18* | *Oranges* | *Brazil* | *California weather conditions have impacted ability to get domestically grown oranges. Contacted three vendors and no product is available. Will serve non-domestic oranges during the dates indicates as planned on the menu and continue to search for a domestic alternative.* |
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