



# Buy American ISM – RGV Timeline 2020

Kristina B. Carrizales

Purchasing Cooperative Specialist

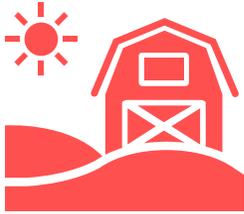
Region One ESC

Child Nutrition Program South Texas Cooperative

September 26, 2019

# Benefits of Buy American

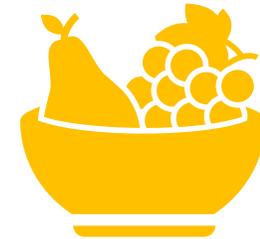
---



Using food products from local sources supports local farmers, ranchers, and other sources



Buy American supports SFAs working with local, or small, minority, and women-owned businesses



Encourages purchasing agricultural commodities and food products from local and regional sources

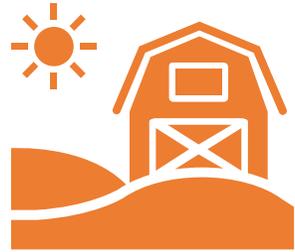
# Nation School Lunch Act

“It is declared to be the policy of Congress, as a measure of national security, to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food, by assisting the States, through grants-in-aid and other means, in providing an adequate supply of food and other facilities for the establishment, maintenance, operation, and expansion of nonprofit school lunch programs.”

# Buy American Basics

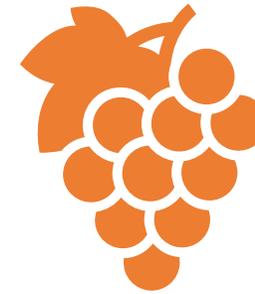
- The National School Lunch Act **requires SFAs to purchase domestic commodities or products “to the maximum extent practicable”**
- Buy American applies to any food and food products procured by SFAs using the nonprofit food service account (both program *and* non-program foods)

# Buy American Basics



## Domestic commodity:

- An agricultural commodity that is produced in the U.S.



## Food Product:

- A food product that is processed in the U.S. substantially using agricultural commodities produced in the U.S.
- Over 51% from American products, determined *by weight or volume*

# Stakeholders



School Food Authorities



State agencies



Institute for Child Nutrition



School Nutrition Association



American Commodity Distribution Association



Food Industry

# Recent Buy American Guidance

- *SP 38-2017: “Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program the National School Lunch Program”*
  - Clarifies that processed foods must be **processed** in the United States containing **over 51% domestic foods** measured by weight or volume; and
  - Provides guidance for the procurement process for how this requirement can be accomplished.

# Buy American Guidance

- A food component is classified as one of the food groups comprising a reimbursable meal
  - Meat / Meat Alternatives
  - Vegetables
  - Fluid Milk
  - Grains
  - Fruits

Foods from Guam, American Samoa, Virgin Islands, Puerto Rico, and Northern Mariana Islands are considered domestic



# BUY AMERICAN PROVISION-Agriculture Improvement Act of 2018

Requires the Secretary “to enforce full compliance” with the Buy American requirements in the NSLA and report to Congress on actions taken and planned

USDA is currently developing guidance in response to this directive

## **Guidance Will Provide Clarity and Resources on:**

- Wild-caught and farmed fish
- State agency enforcement tools

[BuyAmerican Memo – August 15, 2019](#)

# Limited Exceptions to Buy American

There are **two limited exceptions** to the Buy American requirement:

1. A food is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; **or**
2. Competitive bids reveal the cost of a U.S. food is significantly higher than the non-domestic food

# Before Utilizing An Exception...

- Is there another domestic food or food product that can be substituted?
- Is this the best time of year to solicit bids for a specific product?
- How can I determine a third-party verification for cost and availability?

<https://www.ams.usda.gov/market-news>

<https://marketnews.usda.gov>

# Justifying Exceptions

- **If an exception is utilized** the SFA *must* keep documentation and the new memo provides information on the frequency of the exception process.
- [BuyAmerican Checklist – SquareMeals TDA](#)

# Limited Exceptions: Solicitation Sample Language

Exceptions may be approved upon request.

The request must include the:

- Price of the domestic food alternative substitute(s); and
  - Availability of domestic alternative substitute(s) (quantity)
  - Reason for exception: limited/lack of availability or price (include price):
- 
- Price of the domestic food product; and
  - Price of the non-domestic product that meets the required specification of the domestic product.”

**SP38-2017**

# Special Terms and Conditions

- **BUY AMERICAN PROVISION:** Region One ESC, and its cooperative members, have a preference for domestic end products and supplies for use in the United States when spending Federal funds. Region One ESC and cooperative members participating in the National School Lunch Program (NSLP), School Breakfast Program (SBP), Special Milk Program for Children, Summer Food Service Program and/or Child and Adult Care Food Programs, are required by law to use nonprofit School Nutrition Program (SNP) funds, to the maximum extent practicable, to buy domestic commodities and products. A “domestic commodity or product” is defined as 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 produced in the United States. “Substantially” means over 51 percent (51%) of the final processed product must consist of agricultural commodities that were grown domestically. For foods that are unprocessed, agricultural commodities must be domestic and for foods that are processed, they must be processed domestically using agricultural food components that are comprised of over 51% domestically grown items, by weight or volume. Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are considered domestic products under this provision as these products are from the territories of the United States. The product label must designate the United States, or its territories, as the country of origin. Region One ESC and its cooperative members requires Vendor to certify compliance with the Buy American provision, as defined in 7 CFR §210.21(d). Vendors shall provide certification of the domestic content in the parts, components, and other elements contained in the product, including specific information about the percentage of U.S. content from the supplier (i.e., manufacturer or distributor). In the event Vendor or Vendor’s supplier(s) are unable or unwilling to certify compliance with the Buy American provision, or applicability of an exception to the Buy American provision, Region One ESC and its cooperative members may decide not to purchase from Vendor. Region One ESC and/or its cooperative members may require country of origin on all products and invoices submitted for payment by Vendor, and Vendor agrees to comply with any such requirement. **Any exception and/or deviation to the Buy American Provision must be explicitly stated on the Attachment B and/or C of this proposal for each item, and include the country of origin, and percent (%) of U.S. content for each item.** Exceptions to the Buy American provision are very limited; however, an alternative or exception may be approved by Region One ESC and/or its cooperative members, upon request. To be considered for an alternative or exception, the request must be submitting in writing to a designated official of Region One ESC and the cooperative member in advance of delivery; Region One ESC and cooperative members may set a deadline for such requests to be submitted by Vendor. The request must include:
  - 1 Alternative substitute(s) that are domestic and meet the required specifications:
    - 1.1 Price of the domestic food alternative substitute(s); and
    - 1.2 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):
    - 2.1 Price of the domestic food product; and
    - 2.2 Price of the non-domestic product that meets the required specification of the domestic product.

See 7 CFR § 210.21(d), and USDA-FNS memo SP 38-2017 Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program. The Buy American provision applies to all purchases made with School Nutrition Program (SNP) funds.

# Affidavits and Certifications

---

## CERTIFICATION OF COMPLIANCE WITH BUY AMERICAN PROVISION

---

Vendor certifies that vendor is in compliance with all applicable provisions of the Buy American Act. The Buy American Provision requires school food authorities to purchase, to the maximum extent practicable, domestic commodities or products. For a product to meet the Buy American requirement, over 51% of the final processed product (by weight or volume) must consist of agricultural commodities that were grown domestically, and processed domestically. Unprocessed foods must be 100% domestic. See [7 CFR § 210.21\(d\)](#), and USDA-FNS memo [SP 38-2017 Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program](#). The Buy American provision applies to all purchases made with School Nutrition Program (SNP) funds. Purchases made in accordance with the Buy American Provision must still follow the applicable procurement rules calling for full and open competition.

**Proposer Certification, Compliance with Buy American Provision:**

- YES, I agree to the above. (Initial: )  
 NO, I do NOT agree to the above. (Initial: )

**NOTE: any exception to the Buy American Provision must be noted on the Attachments B and/or C for each item**

[Attachment C – Buy American Deviations Form](#)

# Maximize Domestic Foods: Procurement Documents

- **Include domestic foods in:**
- Procurement procedures
- Specifications for food—domestic foods produced and processed in U.S. —including domestic foods from local sources
- Solicitations and contracts
- State agency prototype documents

# Sample of Specifications / Order Guide

Region One Education Service Center  
 Child Nutrition Program - South Texas Cooperative  
 School Nutrition Program Food Items RFP 19-AGENCY-000049  
 Effective July 1, 2019 - June 30, 2020 with 2 one-year extension options  
 Order Guide - Updated 7/22/2019

SY19 CNP-STC Items Requested							Awarded Items												
Bid Item Code/Seq #:	Item Specification:	Pack:	Size:	SY20 Estimated Cases:	Equivalent Brand/Label:	Equivalent Product/Manufacturer / Vendor Item #:	Distributor	Distributor Order #:	Brand/Manufacturer:	SKU/Product #:	Country of Origin:	% content US grown:	% processed in the US:	Buy American Exception and/or other Deviations:	Pack Size:	UOM:	Unit Price:	SY 19-20 Case Price:	SY 19-20 Single Warehouse Discount *
Fruit/Vegetable Frozen Vegetable Bulk	Cauliflower, Florets, IQF, meets USDA Grade A, approximately 12/2lb pack. *DOMESTIC ONLY	12	2lb	1	Garden Fresh	47235	Labatt	600070	NORPAC	13921	USA	over 51%	over 51%		12/2 LB	CASE	\$1.4713	\$36.36	\$35.63
Fruit/Vegetable Frozen Vegetable Bulk	Cauliflower, Florets, IQF, meets USDA Grade A, approximately 12/2lb pack. *NON DOMESTIC WHEN DOMESTIC NOT AVAILABLE	12	2lb	1			Labatt	1160067	FLAV R PAC	13926	MEXICO	0%	0%	Competitive procurement process reveals cost of U.S. product is higher, see item bid code# 43-00846. The product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality	12/2 LB	CASE	\$0.9254	\$23.23	\$22.77

# Maximize Domestic Foods: Certification

- **Certify domestic foods and food products when testing foods, prior to approval**
- **Sample language might state:**
- “We certify that (insert commodity or product name) was produced and processed in the U.S. and contains over 51% of its agricultural food component, by weight or volume, from the U.S.”

# TDA – BiWeekly Update

## *Clarification on Buy American Documentation*

All food contracts awarded by the CE must include the Buy American provision. USDA has established required criteria for SNP operators as they determine and document when an exception to the Buy American provision can be applied.

In **ALL** cases, the CE must make the determination that a Buy American exception is appropriate, and the CE must retain documentation that the CE considered the required criteria in its process to grant an exception.

1. Are there other sources the CE can use which will allow the CE to purchase a domestic product instead of a non-domestic product?
2. Is there another domestic product that can be easily substituted for the non-domestic food product?
3. Is the price difference between the domestic product and non-domestic product reasonable in light of the CE's anticipated per meal cost?

The CE must apply these criteria with each purchase of non-domestic products. The CE cannot create a blanket exception for any product. Under USDA regulations, the use of a list of non-domestic products from any source is not allowable documentation for the Buy American exception.

TDA has developed the *Buy American Checklist* to guide CEs in making the determination if an exception should be granted and to assist the CE in retaining documentation. This form, or another form with the same information, can be attached to supporting documentation to demonstrate compliance with the Buy American provision. Any list of excluded Buy American products provided by another entity or organization is not acceptable documentation.

See the *Administrator's Reference Manual (ARM)*, Section 17, *Procurement* for additional guidance on this topic.

8/26/2019

# Fish

- Caught in International water, Russian Flagship, processed in US
- Caught in International water, US Flagship, processed in Canada
- US farm raised catfish from Mississippi, processed in US
- Canadian Fish, processed in Canada
- Caught in International waters, US Flagship, processed in Guam

# Juice concentrate

- Concentrate – 40% Washington apples/60% nondomestic, with tap water
- Concentrate – 53% Pennsylvania grapes/47% nondomestic with Canadian spring water
- Concentrate - 50% Florida oranges/50% nondomestic with Florida artesian water

# George the Cow

- George the Cow – born, raised and butchered in TX – further processing process with spices **in** Mexico.
- George the Cow – born, raised and butchered in TX – further processing process with spices **from** Mexico.



Kristina B. Carrizales  
Region One Education Service Center  
Purchasing Cooperative Specialist  
[kcarrizales@esc1.net](mailto:kcarrizales@esc1.net)  
(956) 984-6012