Buy American Justification Form

The Buy American Justification Form assists school food authorities (SFAs) with validation documentation to purchase non-domestic food products with nonprofit school food service account funds, in accordance with 7CFR 210.21(d) and Memo SP 38-2017: Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program. SFAs should complete this form upon identification of each non-domestic food product being served in the U.S. Department of Agriculture’s (USDA) School Nutrition Programs. Compliance with the Buy American Provision is included in each SFAs Administrative Review, and SFAs may use this to demonstrate justification for using non-domestic products when appropriate. SFAs are listed as the responsible parties for justification as described in the Questions and Answers for the Buy American Provision, “Neither Food and Nutrition Service (FNS) nor a State agency may make the determination that a domestic commodity or product is not available. Although the Federal Acquisition Regulations (FAR) contain such a list, this applies to procurement by the Federal government only (and cannot be used for identifying domestic exceptions within the School Nutrition Program (SNP) procurement). Each SFA should determine on an individual basis whether domestic alternatives exist first, and if not, whether an exception is warranted. Exceptions are warranted only when (1) the food product 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 costs of a U.S. product are significantly higher than the non-domestic product. Again, there is not a specific amount or percentage that is considered “significantly higher”, and it is the SFA’s responsibility to determine the threshold. Records and documentation must be retained justifying any exception as outlined above. SFAs can maintain documentation of exceptions for domestic foods that are prohibitively costly or not available in sufficient quantities and present this during reviews by the State agency.”

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| **SNP School or District**  **documenting justification:** | |  | |
| **Date:** |  | **Name of individual**  **completing form:** |  |

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| --- | --- | --- |
| Non-Domestic Agricultural Product: | | |
| Please enter answers in column below: | | |
| Product Name: |  | |
| Purchase Unit: |  | |
| Storage Area:  (Ex: cooler, freezer, dry storage, etc.) |  | |
| Country of Origin of Non-Domestic Product:  (Ex: processed in China, grown in Mexico, packed in Brazil, etc.) |  | |
| Alternative Considerations in Using Non-Domestic Products | | |
| Please enter answers in column below: | | |
| 1. Cost analysis:  (Domestic cost is significantly higher than non-domestic) | **YES** | **NO** |
| 1. Bid Cost per Unit of Domestic Product: | **$** | |
| 1. Bid Cost per Unit of Non-Domestic Product: | **$** | |
| Additional explanation for decision: |  | |

|  |  |  |
| --- | --- | --- |
| 2. Availability or Seasonality:  (Product not currently grown domestically) |  | |
| 1. Documentation demonstrating current unavailability on file: (Ex: Copy of Weekly Marketing Report or National Processing Report from Agricultural Marketing Service:   [USDA Market News | Agricultural Marketing Service](https://www.ams.usda.gov/market-news))  Note: Letter from vendor is insufficient by itself. | **YES** | **NO** |
| 3. Are other domestic sources available?  (Ex: Bid-awarded domestic juice unavailable from vendor’s listed manufacturer but can be ordered through a different manufacturer with an insignificant cost increase.) | **YES** | **NO** |
| 1. If yes, explain how you used other domestic sources: |  | |
| 4. Is there a comparable substitute?  (Ex: serving domestic edamame instead of non-domestic garbanzo beans during seasons of low availability) | **YES** | **NO** |
| 1. If yes, what other alternatives to using non-domestic foods were considered? |  | |
| Resulting Decision for Domestic vs. Non-Domestic | | |
| Please enter answers in column below: | | |
| After considering alternatives to non-domestic products, were non-domestic products still used? | **YES** | **NO** |
| 1. If yes, explain why non-domestic products were used instead of an alternate domestic product: |  | |

Note: School should retain and make notes of communications regarding the reasons for the exception to the Buy American provision. This includes but is not limited to email or procurement notes of discussion regarding alternatives to non-domestic products purchased by the school.

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*Signature of Food Service Director Date*