

**EAST STROUDSBURG AREA SCHOOL DISTRICT FOOD  
SERVICES DIVISION**

Secor Administration Building  
50 Vine Street  
East Stroudsburg, PA 18301  
(570) 424-8500 extension 10530

Melissa Collevchio  
Director of Food Services

May 1, 2026

Dear Vendor, Manufacturer or Distributor,

Thank you for your interest in submitting a Dairy bid to the East Stroudsburg Area School District (ESASD).

1. The bid will begin July 1, 2026 and prices must be guaranteed until June 30, 2027.
2. The Dairy bid is for one year with the District's option to renew the contract.
3. ESASD has estimated quantity usage. It is ESASD intent to try to order as close to the quantities listed; however, due to student preferences, governmental commodity allotment, changes, and other unforeseen circumstances the estimates may not be guaranteed as indicated on the bid sheet.
4. Unless otherwise specified in the bid, products which are similar to the ones that are listed, may be substituted. List name of product, pack size, manufacture number, and any other pertinent information.
5. **It is the intent of ESASD to award items bid to one vendor.** ESASD will honor low price bid and award to one vendor all the items which meet ESASD criteria.
6. Submit "Dairy Bid" form.
7. Sign the "Master Bid" page acknowledging that, as the representative of the company, you are in agreement with the criteria set forth by ESASD.
8. Sign and notarize the non-collusion affidavit.
9. Bid will be accepted until 1:00 PM **Friday, May 29, 2026.**

10. Bids will be publicly opened on **Monday, June 1, 2026 at 11:30am.**

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11. All bids must be either hand delivered or mailed to the following address:

East Stroudsburg Area School District  
Secor Administration Building  
50 Vine Street  
East Stroudsburg, PA 18301  
Attention: Food Services Division  
Melissa Collevechio

12. Questions on bid will be answered via email only:

Melissa-collevechio@esasd.net

### **About East Stroudsburg Area School District**

ESASD consists of ten school sites. There are eight preparation kitchens. One school receives the meals through a satellite program. Two schools share one kitchen. ESASD enrollment is approximately 7,000 students. ESASD serves 1,800 breakfast and 4,000 lunch meals daily. All school delivery sites have separate loading areas and receiving is on ground level. School locations and directions to the school are listed on the East Stroudsburg Area School District Web Site: [www.esasd.net](http://www.esasd.net)

Thank you, again for your interest in submitting a bid to the East Stroudsburg Area School District.

Sincerely yours,

Melissa Collevechio

The East Stroudsburg Area School District hires only individuals legally authorized to work in the United States and does not discriminate on the basis of race, color, national origin, gender, religion, age or disability in the admission of access to, or in the provision of services, programs or employment. 9/19/07



# Master Bid Page 2026-2027

## Dairy

**To: East Stroudsburg Area School District  
Secor Administration Building  
Food Services Division  
50 Vine Street  
East Stroudsburg, PA 18301**

**From: Please list company profile:**

Name of company: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Contact person: \_\_\_\_\_

Phone number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email address: \_\_\_\_\_

**Is there a minimum delivery dollar value or case amount per stop? \_\_\_\_\_**

**Have you signed and notarized the non-collusion affidavit? \_\_\_\_\_**

**Have You filled out the Dairy Bid form? \_\_\_\_\_**

**Has each page been initialed at the bottom of the page of the bid document? \_\_\_\_\_**

**Please sign this form that you attest that prices bid will be honored for school year  
2026-2027**

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Signature

Date

---

Print name

Position

East Stroudsburg Area School District  
Food Services Division  
50 Vine Street  
East Stroudsburg, PA 18301

**INSTRUCTIONS FOR NON-COLLUSION AFFIDAVIT**

1. This **Non-Collusion Affidavit** is material to any contract awarded pursuant to this bid. According to the Pennsylvania Antibid-Rigging Act, 73 P.S. 1611 et seq., governmental agencies may require Non-Collusion Affidavits to be submitted together with bids.
2. The member, officer, or employee of the bidder who makes the final decision on prices must execute this Non-Collusion Affidavit and the amount quoted in the bid.
3. Bid rigging and other efforts to restrain competition and the making of false sworn statements in connection with the submission of bids are unlawful and may be subject to criminal prosecution. The person who signs the Affidavit should examine it carefully before signing and assure himself or herself that each statement is true and accurate, making diligent inquiry, as necessary, of all other persons employed by or associated with the bidder with responsibilities for the preparation, approval or submission of the bid.
4. In care of a bid submitted by a joint venture, each party to the venture must be identified in the bid documents, and an Affidavit must be submitted separately on behalf of each party.
5. The term “complementary bid” as used in the Affidavit has the meaning commonly associated with that term in the bidding process, and includes the knowing submission of bids higher than the bid of another firm, any intentionally high or noncompetitive bid, and any other form of bid submitted for the purpose of giving a false appearance of competition.
6. Failure to file an Affidavit in compliance with these instructions will result in disqualification of the bid.

**East Stroudsburg Area School District  
Food Services Division  
50 Vine Street  
East Stroudsburg, PA 18301**

**NON-COLLUSION AFFIDAVIT**

**Contract/Bid Name:** \_\_\_\_\_

State of \_\_\_\_\_:

County of \_\_\_\_\_:

I state that I am \_\_\_\_\_ of \_\_\_\_\_  
[Title] [Name of Firm]

and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors, and officers. I am the person responsible in my firm for the price(s) and the amount of this bid.

I state that:

- (1) The price(s) and amount of this bid have been arrived at independently and without consultation, communication or agreement with any other contractor, bidder or potential bidder.
- (2) Neither the price(s) nor the amount of this bid, and neither the approximate price(s) nor approximate amount of this bid, have been disclosed to any other firm or person who is a bidder or potential bidder, and they will not be disclosed before bid opening.
- (3) No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid.
- (4) The bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive bid.
- (5) \_\_\_\_\_, its' affiliates, subsidiaries, officers, directors, and  
[Name of Firm]  
and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract except as follows:

I state that \_\_\_\_\_ understands and acknowledges that  
[Name of Firm]

the above representations are material and important, and will be relied upon by  
\_\_\_\_\_ in awarding the contract(s) for which this bid

[Name of Public Entity]

is submitted. I understand and my firm understands that any misstatement in this  
affidavit is and shall be treated as fraudulent concealment from \_\_\_\_\_

[Name of Public Entity]

of the true facts relating to the submission of bids for this contract.

\_\_\_\_\_  
[Name and Company Position]

SWORN TO AND SUBSCRIBED  
BEFORE ME THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

**East Stroudsburg Area School District  
Dairy Bid  
2026-2027**

East Stroudsburg Area School District is asking for bid pricing on the following dairy items:

**Flavored Nonfat Milk**

Estimated Usage: 25,000 ½ pints for the school year

Product Code: 700 Butterfat %: 0.00 to 0.49 Non-returnable container: ½ pint  
Container Packaging: Half Pint Paper

Bid Price for July 1, 2026 through June 30, 2027

Area 3 Minimum Resale Price: Yes or No

If No, please list additional cost added above Minimum Resale Price: \_\_\_\_\_

**Low fat Milk, 1% Milkfat, Non Flavored Milk**

Estimated Usage: 35,000 ½ pints for the school year

Product Code: 900 Butterfat %: 0.50 to 1.49 Non-returnable container: ½ pint  
Container Packaging: Half Pint Paper

Bid Price for July 1, 2026 through June 30, 2027

Area 3 Minimum Resale Price: Yes or No

If No, please list additional cost added above Minimum Resale Price: \_\_\_\_\_

**Dairy Pure, 100% Lactose Free, Fat Free Milk**

Estimated Usage: 5,500 ½ pints for the school year

Product Code: Total Fat %; 0.00 Non-returnable container: ½ pint  
Container Packaging: Half Pint Paper

Bid Price for July 1, 2026 through June 30, 2027

Area 3 Minimum Resale Price: Yes or No

If No, please list cost per unit: \_\_\_\_\_

Other cost considerations: \_\_\_\_\_

**East Stroudsburg Area School District  
Dairy Bid  
2026-2027**

**Volume Discount: Please circle all that apply:**

None

4%: 200-quart equivalent (single drop)

9%: 400-quart equivalent (single drop)

13%: 600-quart equivalent (single drop)

**Equipment Use:**

Will Dairy supply equipment such as Milk Coolers: Yes or No

Will there be a charge for equipment: Yes or No

If Yes, what is the charge for equipment: Please list:

**\*\*Additional Items:**

**Low fat Milk, 1% Milkfat, Non Flavored Milk, 1 Gallon**

Estimated Usage: 50 gallons for the school year

Bid Price for July 1, 2026 through June 30, 2027

**Juice - Sun Cup, 4 ounce**

Estimated Usage: 360,000 units for the school year.

Bid Price for July 1, 2026 through June 30, 2027

Orange Juice - 60,000

Apple Juice - 150,000

Grape Juice - 60,000

Fruit Punch - 75,000

Pineapple/Orange - 10,000

**East Stroudsburg Area School District  
Dairy Bid  
2026-2027**

**Cranberry - 5,000**

**Flavored Beverages, 12 ounce**

**Estimated Usage: 3,000 units for each flavor beverage for the school year**

**Bid Price for July 1, 2026 through June 30, 2027**

**Icy Brand Ice Teas (Regular and Flavored) - 3,000 units**

**Swiss Brand Ice Teas (Regular and Flavored) - 3,000 units**

**Lemonade - 2,400 units**

**Flavored Beverages, 16 ounce**

**Estimated Usage: 3,000 units for each flavor beverage for the school year**

**Bid Price for July 1, 2026 through June 30, 2027**

**Icy Brand Ice Teas (Regular and Flavored) - 3,000 units**

**Swiss Brand Ice Teas (Regular and Flavored) - 3,000 units**

**Lemonade - 2,400 units**

**Yogurt, Assorted Flavors, 8 ounce**

**Estimated Usage: 16,000 units for the school year**

**Bid Price for July 1, 2026 through June 30, 2027**

**Peach Yogurt - 2,500**

**Strawberry Yogurt - 4,000**

**Strawberry Banana Yogurt – 3,500**

**Blueberry Yogurt – 3,000**

**Cherry Vanilla – 3,000**



Food and  
Nutrition  
Service

DATE: June 30, 2017

MEMO CODE: SP 38-2017

Park Office  
Center

SUBJECT: Compliance with and Enforcement of the Buy American Provision  
in the National School Lunch Program

3101 Park  
Center Drive  
Alexandria  
VA 22302

TO: Regional Directors  
Special Nutrition Programs  
All Regions

State Directors  
Child Nutrition Programs  
All States

The Food and Nutrition Service (FNS) has continued to receive a number of inquiries relating to the details and enforcement of the Buy American provision in 7 CFR 210.21(d). This memorandum replaces SP 24-2016, *Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program*, dated February 03, 2016. This guidance provides several updates, including suggested contract language to be utilized in solicitations, and serves to reinforce the importance of the Buy American provision to our economy and its positive effects on small and local businesses.

**Buy American provision requirements.** Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336) added a provision, Section 12(n) to the National School Lunch Act (NSLA) (42 USC 1760(n)), requiring school food authorities (SFAs) to purchase, to the maximum extent practicable, domestic commodities or products. This Buy American provision supports the mission of the Child Nutrition Programs, which is to serve children nutritious meals and support American agriculture.

The Buy American provision applies to SFAs located in the 48 contiguous United States and is one of the procurement standards these SFAs must comply with when purchasing commercial food products served in the school meals programs. Although Alaska, Hawaii, and the U.S. territories are exempt from the Buy American provision, SFAs in Hawaii are required to purchase food products produced in Hawaii in sufficient quantities, as determined by the SFA, to meet school meal program needs per 7 CFR 210.21(d)(3). Likewise, SFAs in Puerto Rico are required to purchase food products produced in Puerto Rico in sufficient quantities, under 42 USC 1760(n)(4).

Section 12(n) of the NSLA defines “domestic commodity or product” as an agricultural commodity that is produced in the U.S. and a food product that is processed in the U.S. substantially using agricultural commodities produced in the U.S. Report language accompanying the legislation noted that “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

The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

must be processed domestically using domestic agricultural food components that are comprised of over 51% domestically grown items, by weight or volume as determined by the SFA.

For products procured by SFAs for use in the Child Nutrition Programs using nonprofit food service account funds, the product's food component is considered the agricultural commodity. FNS defines food component as one of the food groups which comprises reimbursable meals. The food components are: meats/meat alternates, grains, vegetables, fruits, and fluid milk. Please refer to 7 CFR 210.2 for full definitions. Any product processed by a winning vendor must contain over 51% of the product's food component, by weight or volume, from U.S. origin. This definition of domestic product serves both the needs of schools and American agriculture. 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 U.S.

**Implementing the Buy American provision.** SFAs are reminded that for all procurement transactions for food when funds are used from the nonprofit food service account, whether directly by an SFA or on its behalf, procurement transactions must comply with the Buy American provision. Implementation of the Buy American provision should be done by: including Buy American in documented procurement procedures, State agency prototypes documents, and all procurement solicitations and contracts; including domestic requirements in bid specifications; contract monitoring; and verifying cost and availability of domestic and non-domestic foods using data in the USDA Agricultural Marketing Service's (AMS) weekly market report at <https://marketnews.usda.gov/mnp/fv-report-config-step1?type=termPrice>.

**The Buy American provision supports local and small businesses.** Using food products from local sources supports local farmers and provides healthy choices for children in the school meal programs while supporting the local economy. Requiring compliance with the Buy American provision also supports SFAs working with local, or small, minority, and women-owned businesses as required by Federal regulations (see 2 CFR 200.321). FNS also encourages purchasing food products from local and regional sources when expanding farm to school efforts.

**USDA Foods comply with Buy American requirements.** FNS encourages SFAs to maximize their use of USDA Foods, which comply with Buy American requirements. USDA Foods are domestic, and purchasing from 100% domestic origin sources is a longstanding USDA policy based on Section 32 of the Agriculture Act of 1935 (P.L. 74-320 as amended; 7 U.S. Code 612c). However, processed end products that contain USDA Foods need to meet the 51% domestic requirement, by weight or volume.

**Limited exceptions to the Buy American provision.** There are limited exceptions to the Buy American provision which allow for the purchase of foods not meeting the “domestic” standard as described above (i.e., “non-domestic”) in circumstances when use of domestic foods is truly not practicable. These exceptions, as determined by the SFA, are:

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

It should be noted that FNS has not defined a dollar amount or percentage triggering an exception requiring consideration of alternatives. Before utilizing an exception, alternatives to purchasing non-domestic food products should be considered. For example, SFAs should ask:

- Are there other domestic sources for this product?
- Is there a domestic product that could be easily substituted, if the non-domestic product is less expensive (e.g. substitute domestic pears for non-domestic apples)?
- 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?
- Am I using third-party verification, such as through USDA AMS, to determine the cost and availability of domestic and nondomestic foods?

If an SFA is using one of the above exceptions, there is no requirement to request a waiver from the State agency or FNS in order to purchase a non-domestic product. SFAs must, however, keep documentation justifying their use of exception(s). FNS has provided sample language of such, to be used as a reference in solicitation and contract documents; these are found in Question 5 in the Questions and Answers document below. Monitoring of contractors by the SFA and oversight by the State agency are critical functions in enforcing the Buy American provision, including review of exceptions, as further outlined below.

**Compliance with, and monitoring of, the Buy American provision by SFAs.** To ensure compliance with the Buy American provision the SFA must ensure solicitation and contract language includes the requirement for domestic agricultural commodities and products. The SFA must also include the Buy American requirement in its documented procurement procedures and retain records documenting any exceptions. SFAs should ask the supplier, i.e., manufacturer or distributor, for specific information about the percentage of U.S. content in any processed end product. In order for SFAs to be able to document the domestic content, they should include in their procurement process a requirement for certifying the domestic percentage of the agricultural food component of commodities and products.

Further, solicitation and contract language must be monitored by the SFA to determine contractor compliance as required by 2 CFR 200.318(b), in order to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Monitoring is also accomplished by reviewing products and delivery invoices

or receipts to ensure the domestic food that was solicited and awarded is the food that is received. SFAs also need to conduct a periodic review of storage facilities, freezers, refrigerators, dry storage, and warehouses to ensure the products received are the ones solicited, and awarded, and comply with the Buy American provision.

**Monitoring of the Buy American provision by State agencies.** State agencies conducting procurement reviews in conjunction with, or as a separate review from, the administrative review process must ensure SFA compliance with the Buy American provision. During a procurement review, State agencies should: (1) determine if SFAs are purchasing domestic commodities as defined in 7 CFR 210.21(d); (2) check that solicitations and contracts contain the Buy American certification language recommended in Questions 6 and 7 below; and (3) review a sample of supplier invoices or receipts to determine whether the solicited-for domestic foods were provided by the awarded contractor. If the SFA is non-compliant with the Buy American provision, the State agency must issue a finding and require corrective action which may include:

- Requiring contract amendments to include language to supply domestic foods, or a new solicitation if the contract amendment is determined, by the contracting parties or State agency, to be a material change;
- Attending a procurement training to increase compliance with procurement standards, including the Buy American provision; and
- Fiscal action for repeat or egregious findings, on a case-by-case basis with approval by the appropriate FNS Regional Office.

During an on-site administrative review, State agencies should look at the labels on a variety of food products in SFA storage facilities and if the State agency identifies non-domestic foods, the State agency must request documentation justifying the limited exception(s) outlined above. If such is not provided, the State agency must issue a finding and require corrective action, which may include:

- Requiring review of food deliveries for contractor compliance;
- Monitoring to ensure the correct domestic food components contracted for are delivered;
- Prior to accepting foods, ensuring that an alternative domestic food component, or an exception to purchase non-domestic foods, has been approved for delivery; and
- Fiscal action for repeat or egregious findings, on a case-by-case basis with approval by the appropriate FNS Regional Office.

Both the administrative review and procurement review teams should work together and communicate findings in order to provide comprehensive monitoring of the Buy American requirement.

Regional and State Directors  
Page 5

State agencies are reminded to distribute this memorandum to SFAs immediately. SFAs should direct any questions concerning this guidance to their State agency. State agencies with questions should contact the appropriate FNS Regional Office.

**Original Signed**

Sarah E. Smith-Holmes  
Director  
Program Monitoring and Operational Support  
Child Nutrition Programs

## Questions and Answers for the Buy American Provision

### **1) How would an SFA determine that an item is a “domestic commodity or product”?**

**Answer:** To determine if a food item meets the Buy American provision, the SFA would need to ensure that the solicited-for domestic foods were included in the vendor response, and provided by the awarded contractor in the foods delivered to the SFA. Section 12(n) of the NSLA defines “domestic commodity or product” as an agricultural commodity produced in the U.S. and a food product processed in the U.S. substantially using agricultural commodities that are produced in the U.S. Reports accompanying the legislation noted that “substantially means over 51% from American products.”

For products procured by SFAs for use in the Child Nutrition Programs, the food component of the product is the agricultural commodity. FNS defines food component as one of the food groups which comprise reimbursable meals. The food components are: meats/meat alternates, grains, vegetables, fruits, and fluid milk. Please refer to 7 CFR 210.2 and 210.10 for full definitions and use of the terms, respectively. Any product processed by a responsive vendor must contain over 51% of the food component, by weight or volume, from U.S. origin.

When considering juice for example, in order for the product to be considered “domestic” in accordance with the Buy American provision, the juice must contain over 51% of the juice or juice concentrate, by volume, from fruits or vegetables grown in the U.S. FNS does not consider water – whether tap or bottled – to be a domestically grown agricultural commodity for purposes of this provision. Likewise, packaging and labor are not agricultural commodities. For products procured by SFAs to be served in the Child Nutrition Programs, the fruit/vegetable component of the product, by volume, is the agricultural commodity. For fruit/vegetable juices, in order to be considered responsive, the juice provided by a vendor must contain over 51% of the fruit/vegetable component of the juice, by volume, from U.S. origin.

### **2) Does the Buy American provision apply to entities that purchase on behalf of an SFA, such as a purchasing cooperative or a food service management company?**

**Answer:** Yes. Any entity that purchases food or food products on behalf of the SFA must follow the same Buy American provisions and exceptions that the SFA is required to follow.

### **3) Are all agricultural commodity or food products purchased using the nonprofit food service account subject to the Buy American provision?**

**Answer:** Yes. SFAs must ensure that all agricultural commodity or food products procured using funds from the nonprofit school food service account comply with the Buy American provision. Pursuant to Child Nutrition Program regulations, all Federal funds, all money received from children as payment for program meals, all proceeds from the sale of competitive foods, and all other income generated by the school food service must accrue to the nonprofit food service account. As a consequence, the entire nonprofit school food service account becomes subject to Federal procurement standards. Therefore, all agricultural commodity or food product purchases made from the nonprofit school food service account are subject to the

Buy American provision, subject to the limited exceptions noted in the memorandum above.

**4) What can an SFA do to comply with the requirements of the Buy American provision?**

**Answer:** To ensure compliance with the Buy American provision the SFA must ensure solicitations and contracts include the requirement for domestic agricultural commodities and products, include this requirement in its documented procurement procedures, and retain records documenting any exceptions. Examples of specifications that SFAs may use in solicitations and contracts to comply with the Buy American provision include:

- Utilizing the Buy American definitions in 7 CFR 210.21(d) in all food product specifications, invitations for bids (IFBs), and requests for proposals (RFPs) for food products, contracts, purchase orders, and other procurement documents issued;
- Require a certification of domestic origin for products which do not have country of origin labels; and
- Including the following language: “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).”

Additionally, SFAs are required by 2 CFR 200.318(b) to monitor contractor performance to ensure compliance with all contractual requirements. This includes compliance with the Buy American provision. SFAs can also require their suppliers to provide certification of domestic origin on food products delivered and on invoices submitted as discussed in more detail in Questions 6 and 7, below.

For example, Program operators may require vendors to provide a certification of domestic origin for all food products listed in all procurement documentation, from a bid or proposal to receipts and invoices. Program operators may deem a bid or response unresponsive and ineligible for contract award for noncompliance with the terms and conditions of contract award, if such certifications are solicited for, but not included. Further, the program operator may establish penalties, including contract termination, if vendors fail to comply with the Buy American provision and no documentation of any exceptions exists.

**5) How can SFAs comply with the requirement to retain records, which should include documentation of exceptions in adhering to the Buy American provision?**

**Answer:** Below is sample language that SFAs should use in solicitations and contracts to comply with the requirement to retain records documenting any exceptions to the Buy American provision:

- I. Exceptions to the Buy American provision are very limited; however, an alternative or exception may be approved upon request. To be considered for an alternative or exception, the request must be submitted in writing to a designated official, a minimum of \_\_\_ day (s) in advance of delivery. The request must include the:

- (1) Alternative substitute(s) that are domestic and meet the required specifications:
  - (a) Price of the domestic food alternative substitute(s); and
  - (b) 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):
  - (a) Price of the domestic food product; and
  - (b) Price of the non-domestic product that meets the required specification of the domestic product.

SFAs may document exceptions by maintaining records of communications between them and their food supplier; this may include emails, documentation of telephone communications, etc. The documentation must be maintained for review by the State agency during procurement reviews of local agency procurement practices.

One resource SFAs and State agencies may use in order to document exceptions is the market news reports available from AMS. AMS provides free, unbiased price and sales information on farm commodities at: <https://marketnews.usda.gov/mnp/fv-report-config-step1?type=termPrice>. Using this website, SFAs and State agencies can find third-party verification of cost and availability of domestic and nondomestic foods. Further, SFAs may use the information to communicate alternatives with food suppliers and document purchase decisions.

#### **6) What is sample language contractors can use to document their compliance with the Buy American provision?**

**Answer:** Below is sample language contractors may use to comply with the Buy American provision; however, language should be tailored to the needs of the contracting parties.

##### Sample Language:

"We certify that \_\_\_ (insert product name) \_\_\_ was processed in the U.S. and contains over 51% of its agricultural food component, by weight or volume, from the U.S.," with space for the supplier to fill in the name of the product and its specific percentage of the domestic agricultural food component contained therein.

#### **7) How should an SFA document the domestic commodity food components for a processed end product?**

**Answer:** SFAs should ask the supplier, i.e., manufacturer or distributor, for specific information about the percentage of U.S. content in the processed end product. In order for SFAs to be able to document the domestic content, they should include in their bidding process a requirement for certification such as: "We require that suppliers certify the food product was processed in the U.S. and certify the percentage of U.S. content, by weight or volume, in the food component of processed food products supplied to us."

SFAs may also include the following statement in the bidding process: "We require bidders to certify that \_\_\_ (insert product name) \_\_\_ was processed in the U.S. and contains over \_\_\_ (insert % of weight or volume) of its agricultural food component from the U.S.," with

space for the supplier to fill in the name of the product and its percentage of the domestic agricultural food component (by weight or volume) contained therein.

State agencies should also include such language in any prototype solicitation documents and contracts provided to the SFAs.

**8) Can a product made from a U.S. agricultural product but manufactured in another country be purchased from the nonprofit school food service account absent a limited exception?**

**Answer:** No. Section 12(n) of the National School Lunch Act defines “domestic commodity or product” as one that is produced and *processed* in the U.S. substantially using agricultural commodities that are produced in the U.S.” This means that the product must be processed entirely in the U.S. and must substantially use domestic agricultural commodities. A large number of items received by schools state on the label that they are “packed” in the U.S. Non-domestic foods packed in the U.S. or non-domestic foods in packaging produced in the U.S. do not meet the Buy American requirements.

**9) Can FNS or a State agency provide a list of foods that are not available domestically and therefore not subject to the Buy American provision?**

**Answer:** No. Neither 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. 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.