Buy American

Final USDA Ruling for Hawaii

2017
Background and Progress:

- Buy American is primarily for the contiguous States. The Buy American for Hawaii is unique which added confusion on how it should be legally applied to Hawaii.
- Over the past year, Buy American for Hawaii was researched by the USDA National Office and the following is the final ruling.
SFA’s in Hawaii are required to purchase food products produced in Hawaii in sufficient quantities, as determined by the SFA, to meet school meal program.
Limited Exemption is granted if...

1. Product is not produced or manufactured in the US/Hawaii in sufficient and available quantities.

2. Competitive Bids reveal the costs of a Hawaii food are significantly higher.
Hawaii must use Buy American

- Must use Buy American in all food solicitations
- Only applies for Hawaii foods, not U.S. foods.

Make sure you understand

- It is NOW the SFA’s responsibility to document why they can’t Buy Hawaii due to cost and/or sufficient quantities.
- SFAs must prove that Hawaii goods are significantly more expensive.
- SFA now must monitor their vendor to ensure vendor is Buying Hawaii Foods.
Buy American Decision Tree

1. Is product produced in Hawaii > 51% Hawaii or grown in Hawaii?

2. Is price significantly higher for Hawaiian Product than elsewhere?

IF NO: must buy Hawaii food

IF YES: consider an alternative product or buy from anywhere
Buy American for Hawaii
Decision Tree

- Buy product from anywhere (following standard procurement guidelines)

  - NO

    - Is product produced in Hawaii (>50% Hawaii product) or grown in Hawaii?

      - YES

        - Is price per unit significantly higher for Hawaii product than elsewhere?

          - YES

            - Consider an alternative product or buy product from anywhere (following standard procurement guidelines)

          - NO

            - Must buy product from Hawaii

        - NO

          - Must buy product from Hawaii
1. BUY AMERICAN: Vendor will comply with the Buy American requirement, which dictates that SFAs participation in the federal school meal programs are required to purchase domestic-Hawaiian commodities and products for SFA meals to the maximum extent practicable. A domestic-Hawaiian commodity or product means an agricultural commodity that is produced in Hawaii and a food product that is processed in Hawaii substantially (at least 51%) using agricultural commodities that are produced in Hawaii (7 CFR 210.21,220.16). SFA's 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).
The New Buy American Clause

Now required to be in all solicitations:

2. _________ 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-Hawaii commodities or products for Programs meals. A 'domestic-Hawaiian commodity or product' is defined as one that is either produced in Hawaii or is processed in Hawaii substantially using agricultural commodities that are produced in Hawaii as provided in 7 CFR 210.21 (d).
3. We (SFA) will require bidders to certify that ________ was processed in Hawaii and contains over _____% of its agricultural food component from Hawaii.
Costs and Sufficient Quantities

- **Cost of Hawaii Grown Food:**
  - Determined by each SFA what is “**too expensive**”.
- Use HCNP’s Buy American Documentation Log annually
- Documentation Log is subject to be reviewed by HCNP
Costs and Sufficient Quantities

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Sufficient Quantities

- Is determined by each SFA what “is sufficient”
- No one rule applies
- Does not have to be “all or nothing” on HI products. May buy all of available Hawaii product, then supplement from elsewhere.
- Must have written documentation if not purchased.
Must have Buy American clause in all solicitations and contracts.

Must buy HI if cost effective or in sufficient quantities. Document if you don’t.

Must monitor vendor. Document everything.
BUY AMERICAN PROVISION WORKSHEET FOR SY 2017-18

SCHOOL FOOD AUTHORITY: 

COMPLETED BY: 

DATE: 

Complete the table below to demonstrate compliance with the USDA’s Buy American provision per 7 CFR 210.21 (d) (3) for Hawaii SFAs.

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Effective Immediately

See SP 38- 2017 for further guidance.
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    Office of the Assistant Secretary for Civil Rights
    1400 Independence Avenue, SW
    Washington, D.C. 20250-9410;

(2) fax: (202) 690-7442; or

(3) email: program.intake@usda.gov

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