



RFP# 2021-04-07  
Addendum 01

Request for Proposals; 2021-22 Vended Meal Contract; Century Community Charter School with bids scheduled to end May 20th, 2021 at 12:00 PM PDT

**THE FOLLOWING CHANGE IS TO BE MADE TO THE REFERENCED REQUEST FOR PROPOSALS:**

---

1. Date Correction
  - a. There is a misprint on pg. 8 of the original RFP in the RFP timetable. The due date should read “Proposals Due/Bid Opening - **Thursday** May 20th, 2021 at 12:00 pm PDT”
2. Kitchen Tour – Attached below, please find photos of the CCCD kitchen space.
3. Additional USDA Language
  - a. The USDA has updated procurement language in three key areas:

**Equal Employment Opportunity**

The Selected Vendor shall comply with E.O. 11246, Equal Employment Opportunity, as amended by E.O. 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, and as supplemented by regulations at 41 CFR part 60, Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.

In connection with the execution of this Contract Agreement, the VENDOR shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The VENDOR shall comply with Executive Order 11246 as amended by Executive Order 11375, and as supplemented by the U.S. Department of Labor regulations (41 CFR, Part 60) and shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment without regard to their race, religion, color, sex or national origin. Such actions shall include, but are not limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. VENDOR further agrees to insert similar provisions in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

**Termination**

Either party may terminate this agreement for cause:

The non-breaching party shall give the breaching party written notice specifying the default, and the breaching party shall have thirty (30) days within which to cure the default. If the default is not cured within that time, the nonbreaching party shall have the right to then terminate this Agreement for cause by giving fifteen (15) days additional written notice to the breaching party. If the breach is remedied prior to

the proposed termination date, the nonbreaching party may elect to continue this Agreement. Immediately if either party becomes insolvent or becomes the subject of any other proceeding, receivership, liquidation or assignment for the benefit of creditors.

Either party may terminate this agreement at any time by giving sixty (60) days written notification to the other party, setting forth the reason and the effective date of termination. Upon such termination, Century Community Charter School and the Vendor shall make settlement of all amounts due hereunder as follows.

### **Buy American:**

The SFA by participating in the federal school meal programs is required to purchase domestic commodities and products for school meals to the maximum extent practicable. Domestic commodity or product means an agricultural commodity produced in the U.S. and a food product processed in the U.S. substantially (at least 51 percent) using agricultural commodities which are produced in the U.S. (7CFR210.21, 220.16). Selected Vendor shall notify SFA in advance of delivery of any product not compliant with this requirement. Product(s) delivered to the SFA which are not compliant with this requirement will be returned and invoice(s) for those items will not be paid.

The vendor must include all food products bid by the company that do not meet the definition of "domestic". This document must be included as a part of the bid. This document is provided on the next page so vendor may add additional food items.

In compliance with this policy, the [ABCSD Program Operator] will ensure that the solicitation and contract language include the requirement for domestic agricultural commodities and products and retain records documenting any exceptions in advance of accepting deliveries. Implementation of the Buy American Provision by [ABCSD Program Operator] will be ensured by:

- Including the Buy American Provision requirement in food bid specifications, IFBs, RFPs, contracts, purchase orders, and other procurement documents issued
- Monitoring the contract to ensure that the domestic products solicited are the ones received
- Requiring suppliers to provide certification of domestic origin for all food products, from bids and proposals through receipts and invoices
- Conducting monthly reviews on storage facilities to ensure the domestic products received are the ones solicited for and awarded

Exceptions to the Buy American Provision will be used as a last resort and are only allowable for one of the two exceptions listed below and outlined in further detail in the USDA Policy Memorandum SP 38-2017: Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program.

- The product is not produced or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality.
- Competitive bids reveal the costs of a United States product are significantly higher than the nondomestic product as determined by SFA.









## Documenting Exceptions to the Buy American Provision

### Background

The Buy American Provision requires school food authorities (SFA) to purchase, to the maximum extent possible, domestic commodities or products. A **domestic commodity** is an agricultural food component that is produced 100 percent domestically (United States and its territories). A **domestic product** is a food product that is processed 100 percent domestically and is comprised of over 51 percent domestic food components by weight or volume.

Ingredients used to flavor, enhance, or prepare products (e.g., condiments, salad dressing) must also comply with the Buy American Provision requirement **only if** the first ingredient (or second after water) is one of the five components that contribute to a reimbursable meal. If the first ingredient in these products is not one of the five components that contribute to a reimbursable meal, the product does not have to comply with the Buy American Provision requirement. For example, catsup with tomato paste as the first ingredient must comply with the Buy American Provision requirement since tomato paste is creditable as a red/orange vegetable, **even though catsup is not a creditable item**. Mustard with distilled white vinegar as the first ingredient does not need to comply with the Buy American Provision requirement since vinegar is not a component that contributes to a reimbursable meal. Additionally, nonagricultural products such as paper, water, packaging, and labor do not need to comply with the Buy American Provision requirement.

The California Department of Education (CDE) developed a Buy American Provision Exception Worksheet assisting SFAs with documenting exceptions to the Buy American Provision. An SFA must document exceptions to the Buy American Provision requirement **prior** to accepting nondomestic agricultural commodities or products. Exception documentation must be kept on file for at least three years including the current school year and must be made available during an on-site administrative review and an off-site procurement review.

The worksheet on page 2 (or equivalent documentation with the same level of detail) must be documented by the SFA every time an agricultural commodity (i.e., one of the five food components) or processed product (i.e., processed food product that includes food components, such as a chicken patty and catsup) does not meet the Buy American Provision requirement in Title 7, *Code of Federal Regulations*, sections 210.21(d) and 220.16(d).

**Note:** SFAs that use the micropurchase method for over 51 percent of their purchases may use the Child Nutrition Information and Payment System Form ID PRU–10b to simplify the documentation of exceptions to the Buy American Provision and certify that reasonable and practical attempts were made to purchase domestic foods for **micropurchases only**.

The SFA must retain written documentation when purchasing nondomestic commodities and products, which is only allowable when one of the following two conditions exist:

1. The product is not produced or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality, **or**

2. Competitive bids reveal the costs of a United States product are significantly higher than the nondomestic product.

Additional guidance for documenting exceptions to the Buy American Provision requirement is in the June 30, 2017, U.S. Department of Agriculture (USDA) Policy Memorandum SP 38-2017, Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program.

Because USDA Policy Memo SP 38-2017 does not address the frequency that SFAs must document exceptions to the Buy American Provision requirement, **the CDE is providing SFAs with the flexibility** of using the Buy American Provision Exception Worksheet (or equivalent documentation with the same level of detail) to document **three types of exceptions**: (1) an annual exception for an entire school year, (2) a seasonal exception for a range of months, or (3) a one-time exception for one date.

## Instructions

1. **Type of Exception:** Check one box only in this section.

- **Annual Exception:** Can only be used for the following five food items<sup>1</sup>: bananas, canned mandarin oranges, pineapple, jicama, and mangos. Complete the worksheet one time each school year for each food item that is nondomestic. If you use multiple vendors for the same food item, then you will need to fill out an exception form for each vendor supplying the food item. **Note:** Using this worksheet to document an annual exception for a food item other than the five listed above is not allowable and will be considered insufficient documentation for an exception during an administrative review.
- **Seasonal Exception:** Can be used in situations when food items are not available seasonally (e.g., if grapes are not available domestically from January through May) or in situations it is not available in sufficient quantities or is cost-prohibitive year-round, but is not one of the five Annual Exceptions. Complete the worksheet one time for consecutive season(s) or month(s) for each nondomestic food item and brand (if applicable) from each vendor. For food items that are not available or are cost-prohibitive year-round, complete this form once each season (i.e., fall, winter, spring, or summer). If you use multiple vendors or purchase different brands for the same food item, then you will need to fill out an exception worksheet for each brand or vendor supplying the food item.
- **One-time Exception:** Can be used for food items in circumstances when the use of domestic foods is truly not practicable (e.g., using star fruit in a nutrition education activity). Complete the worksheet every time a food item is nondomestic.

2. **Person completing the worksheet** Include the first and last name, position, and the name of the SFA. For example: Jane Doe, Food Service Director, ABC School District.

---

<sup>1</sup> Food items include beverages.



3. **Dates** List the date that the vendor informed the SFA that they needed to supply a nondomestic food item. List the date that the SFA agreed to accept the commodity or product in advance of delivery. List the timeframe that the food item was accepted for delivery by the SFA; this timeframe is the entire school year for an **Annual Exception**, a consecutive range of months or a season for a **Seasonal Exception**, or a single date for a **One-time Exception**.
4. **List the nondomestic food item, brand (if applicable), vendor, and country of origin. List only one food item and brand per worksheet.** Include the name of the domestic food item, brand (if applicable), and the country of origin.
5. **Which of the two allowable exceptions is being used?** Check at least one box. Either the food item is not produced or manufactured domestically in sufficient and reasonably available quantities of a satisfactory quality **or** competitive bids reveal the costs of the domestic food item are significantly higher (as defined by the SFA) than the nondomestic food item. For micropurchases, the SFA will check the first box indicating that a clearly domestic food item was cost-prohibitive or not available for purchase.
6. **Provide justification to support the use of one of the two exceptions.** Price or availability data must be provided.

Provide documentation to justify **all exceptions** used to support question 6a. Some ways to obtain this data include contacting the vendor for industry information or through third-party verification, such as the USDA Agricultural Marketing Service (AMS) Run a Custom Report web page<sup>2</sup> at <https://marketnews.usda.gov/mnp/fv-report-config-step1?type=termPrice> to determine the cost and availability of domestic and nondomestic commodities. Using a third-party verification increases the likelihood of an objective justification.

Provide information to support questions (6b) **only for exceptions based on price**. Document whether the cost difference is significant as determined by the SFA. **Note:** The USDA has not defined a dollar amount or percentage that triggers an exception; the SFA determines whether the cost is significant to their operations.

7. **Recommended: What alternatives to purchasing nondomestic food items were**

---

<sup>2</sup> To find cost and availability of produce on the USDA AMS Run a Custom Report.

1. **Report Type**—select **Terminal Market by Commodity** (for Type and By) and **All Commodities** (for By). Select **Run**.
2. **Details**—select **fruit or vegetable** (for Commodity), select **Daily** (for Aggregate) and allow the **All** button to remain highlighted (for Location). Do not enter a location. Select **Go**.
3. **Time Period and Refinement**—leave the default setting for **All Products** (for Type) and **All** (for Environment). Enter a date range (past and current dates only). Select **Run**. **Use the information in the Low-high Price and Origin columns to provide a justification.**

**considered by the SFA?** Although this section is optional, it is strongly recommended that the SFA document whether there are alternatives to purchasing nondomestic food commodities and products. For example:

- a. Are there other domestic sources for the commodity or product?
- b. Is there a domestic commodity or product that could be substituted for the nondomestic product? For example, could the SFA substitute domestic pears for nondomestic apples?
- c. Is the SFA soliciting bids for the commodity or product at the best time of the year? For example, if the SFA contracted earlier or later in the season (e.g., issue solicitation for grapes for the spring months instead of winter), would prices or availability change?

## Buy American Provision Exception Worksheet

**Complete this worksheet for each individual food item that does not meet the Buy American Provision requirement. Only one food item, brand (if applicable), and vendor may be listed on each worksheet.** If the program operator accepts delivery on a nondomestic food item from different companies (e.g., Dole and Del Monte) or accepts delivery of the same food item from different vendors, the SFA must have a separate worksheet for each food item, brand, and vendor.

**1. Check one box below to indicate the type of exception<sup>3</sup>:**

- Annual Exception                       Seasonal Exception                       One-time Exception

**2. Person completing the worksheet:**

First and Last Name: \_\_\_\_\_ Position: \_\_\_\_\_  
Name of SFA (e.g., school district name): \_\_\_\_\_

**3. List the dates for the following:**

Vendor informed the SFA about supplying a nondomestic food item:  
SFA agreed to accept this food item **in advance of delivery**:  
Food item was received by the SFA: School year, **or** season(s)/month(s), **or** date:

**4. List the nondomestic food item and country of origin:** (List only one food item and vendor per worksheet)

Nondomestic food item: \_\_\_\_\_ Vendor: \_\_\_\_\_  
Brand (if applicable): \_\_\_\_\_ Country of origin: \_\_\_\_\_

**5. Which of the two allowable exceptions is being used?** (Check at least one box)

- The food item is not produced or manufactured domestically in sufficient and reasonably available quantities of a satisfactory quality.
- Competitive bids reveal the costs of the domestic food item are significantly higher than the nondomestic food item.

---

<sup>3</sup>**Annual Exception:** Can only be used for **bananas, canned mandarin oranges, pineapple, jicama, and mangos.**

**Seasonal Exception:** Can be used in situations when food items are not available seasonally (e.g., if grapes are not available domestically from January through May). Or in situations when the food item is not available or is cost prohibitive year-round.

**One-time Exception:** Can be used for **food items** in circumstances when the use of domestic foods is truly not practical (e.g., using star fruit in a nutrition education activity).

**6. Provide justification to support the use of one of the two exceptions.**

- a. For both types of exceptions: Provide pricing or availability data for both domestic and nondomestic food item.
- b. For exceptions based on price: Is the cost difference significant as determined by the SFA?

**7. Recommended: What alternatives to purchasing a nondomestic food item were considered?**

By signing below, I confirm that: (1) the information provided above is true to the best of my knowledge; (2) this documentation will be retained for three years including the current program year and made available during an on-site administrative review and an off-site procurement review; and (3) exceptions to the Buy American Provision requirement will be documented **prior** to accepting a nondomestic agricultural food item.

\_\_\_\_\_  
Signature of SFA

\_\_\_\_\_  
Date

---

**THIS ADDENDUM IS HEREBY OFFICIALLY MADE PART OF THE REFERENCED REQUEST FOR PROPOSALS**