

DEPARTMENT OF ENERGY

Proposed Project-Specific Non-availability Waiver for a Solar Powered Battery Energy Storage System (BESS)

BABA WAV 2026-18

AGENCY: U.S. Department of Energy

ACTION: Notice and request for public comment.

SUMMARY: The United States Department of Energy (DOE) State Energy Program (SEP) program is proposing a project-specific nonavailability waiver of the domestic preference requirements of section 70914 of the Build America, Buy America Act (BABA), included in the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58). The proposed project-specific waiver seeks to waive the domestic preference requirements for various manufactured products for a federal financial assistance award to the town of La Pointe, WI. This proposed limited nonavailability waiver would allow La Pointe to purchase a non-compliant Battery Energy Storage System for use on its Emergency Service Building.

SUPPLEMENTAL INFORMATION

Proposed Waiver Duration: Project Specific for the entire period of performance of the grant in which the infrastructure projects will occur.

Applicability: The waiver will apply to eligible expenditures incurred by the recipient on or after the effective date of the final waiver for the period that the waiver is active.

Recipient: Town of La Pointe

Waiver Justification Type: Non-Availability waiver of the BABA manufactured product requirements for the products listed below.

Waiver Level: Project-specific waiver for one award.

Funding Mechanics: Funding for the infrastructure project is made available through the State Energy Program, appropriated via the Bipartisan Infrastructure Law (BIL). The location of the project is La Pointe, WI. The period of performance of this award is 5/24/2024-5/24/2027.

Description of Covered Items: This waiver proposes to waive BABA for the following items:

1. One Hybrid Inverter; 120/208v 3-phase output with AC/DC coupling for grid-tied PV system integration. Will also be integrated with existing backup fossil-powered generation.

2. Two L3 High-Voltage BESS; Cell type LiFePO₄ Lithium Iron Phosphate (LFP). Modular, stackable design. Each module 5.12kWh. Intending to use 40 kWh battery stacks.

Justification: Market research and industry outreach was conducted starting in May 2024 and continued well into 2025. Initially, the recipient held a request for proposals (RFP) on November 15, 2023 seeking a contractor to support their project; the RFP included the BABA requirements and required the selected contractor to carry out the project in conformance with the BABA requirements (among others). Neither the selected contractor nor the selected consultant were able to locate any products that satisfy the BABA requirements. La Pointe also consulted with other localities in Wisconsin who were conducting similar projects and was informed that they research conducted by those similarly-situated recipients likewise turned up no information on BABA compliant BESS systems.

La Pointe did identify one manufacturer who was gearing up to produce microinverters in the United States, but that manufacturer's models will not work for La Pointe's project, because Emphase does not have a high voltage battery solution yet, nor can the microinverters use another third-party BESS system.

There are other All-In-One (AIO) inverters on the market similar to the 15/30kW hybrid inverters, but none meet all of the necessary requirements for this project. One model investigated didn't have the required UL Listing on specification for grid sell back. Other identified options weren't American-made. One manufacturer does have a ROSIE inverter that is built in the U.S., but this inverter is not fully grid-tied interactive (not listed to sell back to grid), nor can it be used on three phase system power yet.

In addition, DOE contacted relevant subject matter experts within the Agency's Solar Energy Technology Office; these experts were similarly unable to identify domestically produced inverters and BESS systems that would conform to the specifications of this project.

Review of the Agency's current posted BABA waivers supports the conclusion that fully BABA compliant BESS systems are incredibly difficult to locate and source. Several current waivers point to the overall lack of domestic production of Lithium Iron Phosphate (LFP) battery cells in the United States manufacturing sector as a primary concern, although they also note that the difficulty in locating compliant BESS systems is due to the difficulty in sourcing several components used in the system; the inverter is highlighted due to its fundamental importance to the overall system. Although the recipient determined that there may be domestic manufacturers for small residential systems or very large, Megawatt-capacity systems, there do not appear to be any domestic manufacturers for medium-sized commercial systems such as the one proposed for use in this project.

Because of how BESSs operate, it is nearly impossible to locate the various individual components of a BESS and try to get them all working together; typically, the communication and controls used in the system is key to proper operability, meaning recipients must find full

systems that meet their specific needs. Therefore, even to the extent that there are various manufacturers that produce and sell the individual components of a BESS, it is unrealistic to buy the components individually and try to assemble them into a working BESS.

Impact Absent the waiver: Absent this waiver, the project would not be able to be completed. Purchase and installation of the BESS represents the entire project scope.

Assessment of Cost Advantage of a Foreign-Sourced Product: Under OMB M–24–02, agencies are expected to assess “whether a significant portion of any cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products” as appropriate before granting a nonavailability waiver. DOE’s analysis has concluded that this assessment is not applicable to this waiver as this waiver is not based on the cost of foreign-sourced products.

Solicitation for Comments: The proposed waiver will be posted on DOE’s public facing webpage as well as the Made in America website (www.madeinamerica.gov) to satisfy the requirement to publish Build America, Buy America Project Waivers and provide the public with fifteen (15) days to submit comments. DOE is seeking public and industry comments from all interested parties and encouraging current manufacturers of the subject products to submit comments regarding potential availability. Comments may be submitted to Agency Official Adam DeDent at adam.dedent@doe.gov.