

## Department of Energy

### Build America, Buy America Act

#### Proposed Project-Specific Non-availability Waiver for HVAC System Products BABA WAV 2024-01

**Proposed Waiver Summary:** The United States Department of Energy (DOE) Office of State and Community Energy Programs (SCEP) is proposing a project-specific non-availability waiver of the domestic preference requirement of section 70914 of the Build America, Buy America Act (BABA) included in the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58) as applied to one federal financial assistance award. This proposed limited non-availability waiver would allow the Recipient to purchase and use non-compliant Heating, Ventilation and Air Conditioning (HVAC) system products including: high-efficiency HVAC rooftop units, Variable Air Volume (VAV) boxes, Air Handling Units (AHU), HVAC Variable Refrigerant Flow (VRF) heat recovery condensing units, associated ducted and cassette type fan coils, and building automation controls.

**Duration of the waiver:** From the effective date of the waiver until December 31, 2024.

**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:** Matchbook Learning Centers (HSDKWLPIKXC7)

**Total estimated project cost related to infrastructure:** \$5,320,798

**Estimated total cost of products being waived:** \$919,545

**Waiver Type:** Non-availability waiver of domestic products that are not available in sufficient quality or quantity needed for the infrastructure project.

**Waiver Level:** Project-specific waiver for one award.

**Funding Mechanics:** Funding for the infrastructure project is made available through the 2022 Funding Opportunity Announcement for Energy Improvements at Public K-12 School Facilities – Bipartisan Infrastructure Law (BIL) – Renew America’s Schools. The location of the project is Indianapolis, Indiana. The period of performance of this award is one year, from January 4, 2024, to December 31, 2024. Installation of the items is expected by August 2024.

**Description of Covered Items:** The infrastructure project includes a total of 20 HVAC systems. HVAC system products to be covered by this waiver and used in this project include:

- High-efficiency HVAC rooftop units (NAICS code 333415, manufactured product)
- Variable Air Volume (VAV) boxes (NAICS code 333415, manufactured product)
- Air Handling Units (AHU) (NAICS code 333415, manufactured product)
- HVAC Variable Refrigerant Flow (VRF) heat recovery condensing units (NAICS code 333415, manufactured product)

- Associated ducted and cassette type fan coils. (NAICS code 333415, manufactured products)
- Building automation control system (NAICS code 334512, manufactured product)

**Description of Market research and Justification:** Market research was conducted between May and December of 2023 via email correspondence and phone calls with product manufacturers. The market research was conducted by the Recipient, Lawrence Berkeley National Laboratory, and DOE's Schools & Nonprofits Program Team. Manufacturers were not able to comply with BABA requirements due to the fact that their HVAC system products, components, and advanced controls are not fully produced in the USA; however, their products are assembled in the USA with foreign components.

The recipient's market research was not able to identify manufacturers who were able to meet the 55% cost of components requirement for the manufactured products listed above that are required for the project's completion. For the HVAC equipment, the recipient contacted four industry-leading suppliers and found that the proposed manufactured products were not domestically manufactured. One manufacturer noted their products "meets the requirements of FAR 52.225-11 of the Buy American Act." Additional research by DOE found this certification is inapplicable with respect to HVAC systems because it references a section of the FAR that discusses standards for construction materials, which have a different standard than the BABA manufactured products standard. DOE staff reached out to several manufacturers for clarification and either received no response or insufficient information that did not change the proposed waiver finding of nonavailability.

After extensive outreach, no domestic manufacturer was able to provide the materials necessary to meet the BABA requirements for all products specified in this waiver. This project has specific requirements for the building automation system including but not limited to being 100% native BACnet, and being 100% reverse compatible with the manufacturers product line. These requirements are important for the systems total lifetime cost and to meet the owner's energy savings targets. Market research confirmed that due to the lack of USA manufactured computer chips there were no automation controlling units manufactured in the U.S. that provide the specifications the recipient requires for the infrastructure project, that are also BABA compliant.

**Impact Absent the waiver:** If the waiver is not issued, the Recipient will have to cancel the efficiency project. By not moving forward with the project the school will be unable to open for the 2024-2025 school year.

**Solicitation for Comments:** DOE is seeking public comments from all interested parties, including industry members and current manufacturers of the covered HVAC system product items listed above, regarding the potential availability of project-compliant products from domestic manufacturers. The proposed waiver is available for public comment for fifteen (15) calendar days. **Comments are due no later than May 1, 2024**, and must be submitted by email to the DOE Contracting Officer, Liz Parrish, at [Elizabeth.Parrish@EE.DOE.Gov](mailto:Elizabeth.Parrish@EE.DOE.Gov). Please put "**BABA WAV 2024-01 - MLC**" in the subject line of the email.