

Build America, Buy America Act Final Nonavailability Waiver

Waiver Summary: The United States Department of Energy (DOE) Solar Energy Technology Office (SETO) is issuing a project nonavailability waiver of the manufactured products 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) as applied to one federal financial assistance award for the Charlo, Montana School District. This limited nonavailability waiver allows the Charlo School District to purchase non-compliant air source heat pumps and associated air handling system.

Duration of the waiver: The effective date of this waiver is from date of issue to December 31, 2024.

Recipient: Charlo School District 71 (MNU8SWRCA1J1)

Total estimated project cost related to infrastructure: \$1,200,000

Estimated total cost of products being waived: \$248,000

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 Charlo, Montana.

The infrastructure project includes a total of five 12-ton air source heat pumps (NAICS Code 333415).

Description of Market research and Justification: Market research and industry outreach was conducted by an energy efficiency company in September 2023 – January 2024. Market research was conducted by a commercial HVAC supplier in October 2023 - January 2024. Market research was conducted by the DOE Technical Project Officer in November 2023-January 2024.

The energy efficiency firm reached out to three industry-leading suppliers. They confirmed that there does not appear to be any HVAC air source heat pumps manufactured in the U.S. that provide the specifications the recipient requires, that are also BABA compliant.

The DOE Technical Project Officer utilized both online searches and email inquiries, and coordinated with the DOE Manufacturing and Energy Supply Chain Office. These revealed that there does not appear to be any air-to-air heat pumps manufactured in the U.S. that provide the specifications the recipient requires, that are also BABA compliant. One company manufactures geothermal and water source heat pumps. These are offered as water-to-air and water-to-water, and the firm does not include air source heat pumps in its product line. Another heat pump option researched produces an air-to-water heat pump that is not a viable option for the Charlo School District.

The research found that the air-to air heat pump equipment specified is assembled in the United States, but many of the components are manufactured outside of the United States and the equipment does not meet the 55% cost of components for manufactured products requirement. After extensive outreach, no domestic manufacturer was able to provide the materials necessary to meet the BABA

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requirements for the products specified in this waiver. These specifications are important for the systems total lifetime cost and to meet the owner's energy savings targets.

Impact Absent the waiver: Absent this waiver, the project would not be able to be completed given that HVAC is the primary upgrade the recipient is seeking.

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.

Summary of Public Comment: The proposed waiver was publicly posted by the Department of Energy for comments during the period of May 10 – May 25, 2024. No comments were received from the public, and therefore no substantive changes were made in response. Changes were made to the formatting of this waiver.