

Department of Energy
Build America, Buy America Act
Proposed Project-Specific Non-availability Waiver
for HVAC Systems and Automated Building Controls and LED Lighting
BABA WAV 2024-05

Proposed Waiver Summary: The United States Department of Energy (DOE) Office of State and Community Energy Programs is proposing 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 White River, South Dakota School District. This proposed limited nonavailability waiver would allow the White River School District to purchase non-compliant air source heat pumps and associated air handling systems, building automation systems, electrical distribution system and LED lighting.

Duration of the waiver: The effective date of this waiver is from date of issue to January 31, 2028.

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: White River School District 47-1 (RVLJS9PMMCE1)

Total estimated project cost related to infrastructure: \$12,200,000

Waiver Type: Nonavailability 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 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 White River, South Dakota. The period of performance of this award is from November 2023 to January 2028. Installation of the items is expected by December 2026.

Description of Covered Items: The infrastructure project includes air source heat pumps, split system, variable refrigerant flow heat pumps and associated air handling systems (NAICS Code 333415), as well as automated building controls (238210) and LED exit and emergency lighting (335313). Specifically:

- 4-Pipe Chilled & Heating Water central Utility Plant (CUP) with Thermal Ice Energy Storage (White River Main Campus) with Building Automation Controls: Dedicated Outdoor Units, Split-System Heat Pumps, Packaged Units, Chillers, Boilers, Pumps, Ice Storage Tanks, Air Handling Units, Energy Recovery Units, Hydronic Cassette Units, Hydronic Unit Heaters, Hydronic Accessories (Expansion Tanks, Air/Dirt Separators,

Glycol Feed Assemblies, etc.), piping, fan coil units, Blower Coil units, and building automation system master controllers that enable scheduling, alarming, and monitoring of the systems to reduce energy and cost expenditures.

- Variable Refrigerant Flow (VRF) systems (Norris School) with integrated Building Automation Controls: Dedicated Outdoor Units, Split-System Air-to-Air Heat Pumps, Packaged Units, VRF Heat Recovery Condensing Units, associated ducted and cassette type Fan Coils, and standalone VRF manufacturer building automation system master controllers that enable scheduling, alarming, and monitoring of the VRF system to reduce energy and cost expenditures.
- Electrical Distribution Equipment: Switchboards, Distribution Boards, Panel Boards, and fused disconnect switches, and circuit breakers to power to main campus and Norris school.

Market research and industry outreach was conducted by the school district from October 2023 through August 2024. The school district reached out to multiple industry leading suppliers to determine whether any of their products/manufacturers could certify that the products met Build America, Buy America requirements. None of the manufacturers were able or willing to provide certification prior to receiving on order.

The school district reached out to building automation controls manufacturers, including the company whose product is already installed in the district. While much of the manufacturing is performed in the US, none of the manufacturers could certify that they could meet the 55% US components requirement.

The DOE Technical Project Officer utilized both online searches and email inquiries, and coordinated with Lawrence Berkeley National Laboratory. 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.

The school district also relied on and determined that the conditions listed in DOE BABA Waiver 2024-01 still apply.

Justification: The recipient's market research was not able to yield 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. These products were found to be manufactured in the United States, but did not meet the 55% cost of components test. 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. These requirements 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. In addition, the project period of performance for installation is between June 2025 and October 2026, concluding before the start of the 2025-26 school year so the desired product is necessary in order to meet project deadlines.

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 on September 20, 2024 and a notice of the proposed waiver was also posted to the Made in America website on September 20, 2024, to satisfy the requirement to publish any Build America, Buy America Act Project Waiver and provide the public with fifteen (15) calendar 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 should be submitted to the Contracting Officer, Liz Parrish, at Elizabeth.Parrish@ee.doe.gov. Please put “**BABA WAV 2024-05 - WHITE RIVER**” in the subject line of the email.