

Build America, Buy America Act Nonavailability Waiver

Waiver Summary: The United States Department of Energy (DOE) Office of State and Community Energy Programs 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 Porterville, California school district. This limited nonavailability waiver allows the Porterville School District to purchase non-compliant automated building controls, LED light fixtures and replace existing heating equipment with high efficiency electric heat pumps.

Duration of the waiver: The effective date of this waiver is from date of issue to October 31, 2025.

Recipient: Porterville School District (DVZ6S7VKGRK7)

Total estimated project cost related to infrastructure: \$6,468,762

Estimated total cost of products being waived: \$1,832,000

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 Porterville, California. The period of performance of this award is 13 months, from September 30, 2024 to October 31, 2025. Purchase of the items is expected by December 2024.

Description of Covered Items: This waiver includes:

- Building automation systems includes unit controllers, space temperature / humidity sensors with CO2 (CalSHAPE compliant), duct temperature sensors and fan status sensors for all units as a standard economizer damper actuators for all units. New 0-10v damper actuators will be provided and existing economizer controls where they exist will be disabled in place unit T24 compliant DCV and economizer FDD control logic. Compass is an operator workstation software package (NAICS Code 334512).
- Heat Pump upgrades includes 3, 4, 5, 7.5, 10 and 14 ton heat pump assemblies (NAICS Code 333415).
- LED lighting upgrades includes lamp and retrofit kits, mounting and motion and photo sensors (NAICS Codes 335139 and 335132).

Building Automation Controls

Market research and industry outreach was conducted by the recipient between March and May 2024. In addition, the recipient relied on approved waiver 2024-001 issued May 22, 2024 and verified that the circumstances listed in the approved waiver had not changed.

HVAC System with Integrated Building Automation

Market research was conducted by the recipient from March 2024-May 2024. Market research was conducted by the DOE Technical Project Officer in October 2023-December 2023, including calls made directly to manufacturers.

The recipient relied on waiver 2024-002 issued July 11, 2024. The research for that waiver 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% requirements. Therefore, the recipient was unable to find a manufacturer that would certify their equipment was BABA compliant. Additionally, the Recipient reviewed the market research that was recently approved in Waiver 2024-002 and verified that the previous analysis still stands that there are no air-to-air heat pumps that meet BABA compliance. Ground source heat pumps were also considered but determined to be cost prohibitive for this project with a typical premium of 30%-50% above air source heat pumps. Additionally, the electrical services would also still need to be replaced to support the ground source system, further increasing the system cost impact. The recipient did not identify any BABA compliant ground source heat pumps in their research.

Impact Absent the waiver: Absent this waiver, the project would not be able to be completed given that the building automation controls and HVAC are the primary upgrades the recipient is seeking. In addition, the project period of performance for installation is between September 2024 and October 2025, concluding a portion before the start of the 2024-25 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.

Summary of Public Comment: The proposed waiver request was publicly posted by the Department of Energy for comments during the period of September 3 - 18, 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.