

**WAIVER NUMBER: 2024-05**

**Issued: October 29, 2024**

**Expires: January 31, 2028**

## **Build America, Buy America Act Final 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 White River, South Dakota School District. This limited nonavailability waiver allows 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:** \$14,989,736

**Estimated total being waived:** \$12,200,000

**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 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 Market Research and Justification:**

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.

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

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 waiver is needed to keep the project on schedule; installation is scheduled to take place between June 2025 and October 2026, concluding before the start of the 2025-26 school year.

**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 was publicly posted by the Department of Energy for comments during the period of September 20 – October 5, 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.