

Build America, Buy America Act Project Specific Nonavailability Waiver

Waiver Summary: The United States Department of Energy (DOE) Grid Deployment Office, Building Technologies Office, and Office of State and Community Programs is issuing a project specific 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 four federal financial assistance awards. This limited nonavailability waiver allows the recipients to purchase non-compliant Distribution System Battery Energy Storage Systems (BESS) and associated components.

Waiver Type: Nonavailability waiver of the BABA manufactured product requirements for the Distribution System BESS and associated components needed for each award.

Duration: The effective date of this waiver is from date of issue until June 30, 2029.

Applicability: The waiver is applicable to recipient expenditures made by the following specified projects for BESS on or after the effective date of the waiver until the date of expiration, June 30, 2029.

1. Colorado Energy Office – Platte River Power Authority

Recipient: Colorado Energy Office (JLVGQ4E7RD53)

Sub-Recipient: Platte River Power Authority (U1J7ERTJ3NU6)

Total estimated project cost related to infrastructure: \$553,000

Estimated total cost of the products being waived: \$469,000

Funding Mechanics: Funding for the infrastructure project is made available through both the 2022 and 2023 Funding Opportunity Announcement Bipartisan Infrastructure Law (BIL) - Preventing Outages and Enhancing the Resilience of the Electric Grid Formula Grants to States and Indian Tribes (DE-FOA-0002736). The location of the project is in Estes Park, Colorado. Planned procurement winter 2026. Estimated installation in 2027.

Description of products being waived: This waiver applies to one 5MW/20MWh lithium iron phosphate battery system. (PSC 6140 and NAICS 335911/35912).

2. City Public Service Board, San Antonio TX

Recipient: City Public Service Board (CPS Energy) (N6AVFBEGT9K3)

Total estimated project cost related to infrastructure: \$37,700,000

Estimated total cost of the products being waived: \$33,000,000 **Funding Mechanics:** Funding for the infrastructure project is made available through the 2023 Funding Opportunity Announcement for Grid Resilience and Innovation Partnerships (GRIP) – Bipartisan Infrastructure Law (BIL) – Smart Grid (DE-FOA-0002740). The location of the project is San Antonio, Texas. Planned procurement winter 2024. Estimate installation by fall 2025 and spring 2026.

Description of Products Being waived: This waiver applies to two Distribution BESS, one 20 MWh and one 40MWh. (PSC 6140 and NAICS 335910).

3. City of Madison, Wisconsin

Recipient: Slipstream Group, Inc. (M5PTTWHDPVV3)

Total estimated project cost related to infrastructure: \$7,840,000

Estimated total cost of products being waived: \$435,000

Funding Mechanics: Funding for the infrastructure project is made available through the Connected Communities Funding Opportunity Announcement DE-FOA-0002206. The location of the project is Madison, Wisconsin. The period of performance of this award is 18 months, from October 2024 to April 2026. Purchase of the items is expected by December 2024.

Description of Covered Items: This waiver applies to a 430 kWh and a 238 kWh behind-the-meter stationary battery and associated electrical components (NAICS 335311).

4. Matchbook Learning Centers

Recipient: Matchbook Learning Centers (HSDKWLPIKXC7)

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

Estimated total cost of products being waived: \$273,596

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 September 30, 2025. Installation of the items is expected by November 2024.

Description of Covered Items: This waiver applies to one 50kW/186kWh Battery Energy Storage System (NAICS code 335911, manufactured product)

Description of Market Research and Justification: The recipients and subrecipients listed above conducted market research and extensive industry outreach to identify BABA-compliant Distribution System BESS. In some cases, this included issuing requests for proposals, followed by industry outreach to multiple manufacturers. The recipients determined that no manufacturer could provide a BABA-compliant product at the size, type, and voltage required for each of the projects. DOE Technical Project Officers and Building Technologies staff confirmed, through online searches and consultation with industry experts, that there do not appear to be any BABA-compliant Distribution System BESS manufactured in the U.S. that provide the specifications needed for the projects.

In addition, recipients may not use program funds to purchase items described in this waiver manufactured by entities owned by, controlled by, or subject to the direction of a government of a foreign country of concern, or by entities that are headquartered in a foreign country of concern, as determined by the DOE.

Impact Absent the waiver: Absent this waiver, these projects would not be able to be completed. Specifically for the Matchbook Learning Centers project, the project would not be able to be completed given that Battery Energy Storage System is essential to storing excess PV energy, demand reduction strategies, and providing a resilient resource to use the facility as an emergency shelter as required in the scope of the DOE grant. Specifically for the City of Madison Wisconsin project, the goal of this effort is to demonstrate how Grid Interactive Efficient Buildings (GEB) can be cost-effective at scale. The subject equipment of the request for waiver, behind-the-meter (BTM) batteries, represent a key

component to GEB systems. BTM batteries at the individual or household level, combined with the right incentives, can unlock demand-side flexibility and ease system integration of electricity from wind and solar energy. There are critical-path timelines already in place for the project, including when the BTMs must be installed, and the availability of solely domestic product is outside this timetable.

Assessment of Cost Advantage of 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 products 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 request was publicly posted by the Department of Energy for comments during the period of October 8 - 23, 2024. No comments were received from the public, and therefore no substantive changes were made in response. Clarifying changes were made to this waiver.