Department of Energy

Build America, Buy America Act

Proposed Project-Specific Non-availability Waiver

for HVAC Systems, Automated Building Controls and LED Fixtures

BABA WAV 2025-04

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 and construction materials 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 Clinton, Arkansas school district. This proposed limited nonavailability waiver would allow the Clinton School District to purchase non-compliant HVAC systems and associated building controls and LED lighting fixture upgrades

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

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: Clinton School District (VPQNBVETHWT3)

Total estimated project cost related to infrastructure: $1,591,166

Estimated total cost of products being waived: $1,591,166

Waiver Type: Nonavailability waiver of the BABA manufactured product and construction material 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 Van Buren County, Arkansas. The period of performance of this award is 18 months, from November 30, 2023 to December 30, 2025.

Description of Covered Items: This waiver proposes to waive

- HVAC system with integrated Building Automation Controls including Dedicated Outdoor Units, Split-System Heat Pumps, Variable Refrigerant Flow (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. NAICS Code

333415

- LED Lighting upgrade will replace existing fluorescent lighting in the Clinton High School stadium and auditorium. NAICS Code 335132.

HVAC System with Integrated Building Automation

The recipient's General Contractor searched multiple manufacturers online, made calls to all known suppliers that might be able to provide products for this project that would meet BABA requirements. Inquired with other trade contractors to see if they knew of or could locate manufacturing that could meet requirements. There was not coordination with Manufacturing institutes. Coordination was with manufacturers directly. US Commercial Service and Select USA websites were visited and searched. References: Select USA Home (trade.gov) and Research Center (trade.gov). For this project located in rural Arkansas, it was necessary to have direct contact with the manufacturer and manufacturer representative from the suppliers to determine if it were possible to acquire BABA compliant components for this project.

LED Lighting Fixtures

For the LED lighting fixtures, the recipient relied on the manufacturing supply chain report issued in 2020 by the National Renewable Energy Laboratory that found that all available LED lighting is manufactured in Asia, primarily in China.

Justification: The recipient's market research was not able to yield product manufacturers who were able to meet the 55% cost of components requirement for the manufactured products or the construction material manufacturing requirements 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. Recipient's market research was also unable to yield certification for spray foam materials. 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 December 2024 and December 2025, concluding a portion before the start of the 2026-27 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 December 9, 2024 and a notice of the proposed waiver was also posted to the Made in America website on December 9, 2024, to satisfy the requirement to publish any Build America, Buy America Act Project

Waiver and provide the public with fifteen (15) 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 2025-04 - CLINTON**" in the subject line of the email.