

WAIVER NUMBER: 2025-03

Issued: January 6, 2025

Expires: December 31, 2025

Build America, Buy America Act Nonavailability Waiver Extension

Original waiver summary: The United States Department of Energy (DOE) Office of State and Community Energy Programs issued Waiver 2024-03 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 Warner, Oklahoma school district. This limited nonavailability waiver allows the Warner School District to purchase non-compliant variable refrigerant flow HVAC systems and associated building controls and electrical system upgrades, including electrical distribution equipment and spray insulation effective September 30, 2024.

Original Duration of the Waiver: September 30, 2024 – December 31, 2024

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

Applicability: The waiver extension applies to eligible expenditures incurred by the recipient on or after the effective date of the final waiver for the period that the waiver extension is active.

Recipient: Warner School District I 74 (LUMZT3DJYK26)

Total estimated project cost related to infrastructure: \$12,044,852

Estimated total cost of products being waived: \$10,700,000

Waiver Type: Nonavailability waiver extension 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 Warner, Oklahoma. The period of performance of this award is 48 months, from November 30, 2023 to November 30, 2027.

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 Codes 333415, 333914, 334512)
- Electrical Distribution Equipment: Switchboards, Distribution Boards, Panel Boards, and fused disconnect switches, and circuit breakers to power to ES and MS/HS campus renovations. (NAICS Code 335313)

- Spray Foam Insulation: Polyurethane and Isocyanate foam sprayed into interstitial roof space. (NAICS Code 326150)

Waiver Extension 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.

The grantee is unable to procure the items by the current waiver expiration date. Therefore, a waiver extension is granted bringing the date to December 31, 2025.

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 2024 and November 2027, 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 Comments: The waiver request was publicly posted by the Department of Energy for comments during the period of December 3 through 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.