

Department of Energy
Build America, Buy America Act
Proposed Project -Specific Non -availability Waiver
For Battery Energy Storage Systems
BABA WAV 2026-35

Proposed Waiver Summary: The United States Department of Energy (DOE) is considering 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 one federal financial assistance award for Ava Community Energy Authority. This limited nonavailability waiver allows the Ava Community Energy Authority to purchase Battery Energy Storage Systems.

Duration of the waiver: The effective date of this waiver is from date of issue to June 30, 2028.

Applicability: The waiver applies 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: Ava Community Energy Authority (NA44W5ZJTT95)

Total estimated project cost related to infrastructure: \$1,616,132

Waiver Type: Non-availability waiver - manufactured products for the products listed below.

Waiver Level: Project-specific waiver for one award.

Funding Mechanics: Funding for this project was made available under the FY23 Consolidated Appropriations Act, P.L. 117-328.

Description of Covered Items: Two fully-integrated Battery Energy Storage Systems that have the following specifications:

- Tier 1 Lithium Iron Phosphate chemistry;
- Scalable Capacity, suitable for commercial/light commercial applications;
- Three-phase 208 VAC and/or 480 VAC rated grid voltage;

- Full integration for microgrid use, including inverters, BMS, and controls;
- UL 9540/1741/1973 certifications (or equivalent);
- Outdoor rated, turnkey or pre-configured, with grid and backup capability.

Waiver Justification: (Non-availability) Both Ava and the Department were unable to identify BABA-compliant options that met the specifications for this project. Ava conducted good faith efforts to solicit bids for domestic products, first by issuing a request for proposals in early 2024 which identified a preference for domestic-sourced, BABA-compliant materials. However, no bidders came back with appropriately US-based battery proposals. In October 2025, Ava subsequently contacted five prominent battery manufacturers to inquire about BABA-compliant systems directly; of the responses received, no manufacturers indicated they could make a system that was both BABA compliant and to the proper specifications of Ava's project.

Finally, in early 2026, DOE also conducted research into the availability of compliant BESS systems for this project. The Agency identified two manufacturers that could potentially provide BABA-compliant equipment. However, upon review, Ava determined that these options were not within permissible specifications for their project.

Impact Absent the waiver: Absent this waiver, the project would not be able to achieve its contracted outcomes. The BESS system is essential to storing excess Photovoltaic energy, executive demand reduction strategies, and delivering the scope of work as required by the DOE grant. Absent this waiver, reduction in cost savings resulting from procurement delays and failure to attain NEM 2.0 would result in the sites failing to meet energy savings requirements under the applicable California energy service contract code pursuant to the power purchase agreement between Ava and Hayward. The Ava team must deliver systems to participating cities under California's NEM 2.0 tariff before program deadlines to secure lifetime energy savings for municipal customers. Re-soliciting or redesigning with unverified equipment would add 6-12 months of delay. In addition, the project's integrated PV + storage design depends on an interoperable BESS. Without it, the project would lose the ability to perform peak shaving, backup, and demand management function central to the resilience objectives of the award.

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 and a notice of the proposed waiver was also posted to the Made in America website 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 Adam DeDent at adam.dedent@doe.gov.