**Build America, Buy America Information and Wavier Form**

**for**

**Leading by Example Decarbonization Grant Program for State Entities**

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| This document provides an overview of the federal Build America, Buy America provisions that apply to certain project types which are eligible for funding under the Department of Energy Resources Leading by Example (LBE) Decarbonization Grant Program. In addition, a draft waiver form is provided for state entities that will need to submit for an exemption from U.S. DOE prior to receiving grant funds. |

**Overview**

The Massachusetts Department of Energy Resources [**Leading by Example Decarbonization Grant Program for State Entities**](https://www.mass.gov/info-details/lbe-decarbonization-grant-program-for-state-entities) (Program) is for eligible state entities that are looking to accelerate their transition from fossil-fuel equipment to efficient electric alternatives at existing state government facilities. The Program focuses on the preemptive avoidance of in-kind replacement of fossil-fuel-based systems and equipment by providing the necessary funding to deploy efficient electrified solutions. Because funding for this Program comes from the U.S. Department of Energy, certain project types – namely heat pumps and water heating – are subject to federal Build America Buy America requirements.

The Build America, Buy America Act (BABAA)[[1]](#footnote-2) requires that any infrastructure project receiving federal funds, either solely or in addition to other funds, must adhere to the requirements set forth by BABAA. The federal definition of an infrastructure project is any “construction, alteration, maintenance, or repair” of various types of infrastructure, including but not limited to buildings and real property.

BABAA requirements pertain to any iron and steel, manufactured products, and construction materials used in a project, all of which must be produced in the United States. Installations of air-source heat pump solutions and electric water heating projects are defined as manufactured products in an infrastructure project; therefore, equipment for these project types procured using LBE Program funding **must be domestically manufactured in the United States *or otherwise* apply for and be granted a BABAA waiver.**

During the bid solicitation process, applicants must agree to request that vendors submitting proposals provide a solution that meets the BABAA requirements and detail the additional cost of meeting those requirements. Bidders are not required to provide a BABAA compliant solution if there is none available. The applicant is required to procure solutions that meet BABAA requirements unless there are none available, they are significantly more expensive than their non-BABAA certified counterparts, or go against the public interest. To award a proposal that is not BABAA compliant, state entities must pursue one of the following BABAA waivers:

* Non-Availability: A waiver for when the current stock of domestically manufactured products is not sufficient to provide for the project in a timely manner or is not of satisfactory quality.
* Unreasonable Cost: A waiver for when the inclusion of domestically manufactured products and materials raises the overall cost of the project by more than 25%.
* Public Interest: A waiver for when the adhering to BABAA may go against public interest.

**Waiver Review and Decision Process**

Waivers must be completed by the agency and submitted to LBE staff, who will review the waiver and, if acceptable, forward it to the Contracting Officer of the State Energy Program: Bipartisan Infrastructure Law program funds. U.S. DOE may request, and the recipient must provide, additional information for consideration of a submitted wavier. A template waiver form is provided below; for a completed example, see [BABA 2023-04 Berlin BABA Waiver Request\_POC.pdf (energy.gov)](https://www.energy.gov/sites/default/files/2023-08/BABA%202023-04%20Berlin%20BABA%20Waiver%20Request_POC.pdf).

Waiver requests may take up to 90 calendar days to process and are subject to review by U.S. DOE and the Office of Management and Budget, as well as a public comment period of no less than 15 calendar days. U.S. DOE may reject or grant waivers in whole or in part depending on its review, analysis, and/or feedback from OMB or the public. The final determination regarding approval or rejection of the waiver request may not be appealed.

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| Grant applicants must fill out this waiver and submit the completed form to LBE prior to or in tandem with submission of the grant application.   * *Instructions on how to best answer questions are provided in blue.* * Sections that require answers from recipients are provided in red. * Please send the completed waiver to LBE staff in a word document format. * Please feel free to contact LBE staff if you have any questions about this form. |

**Build America, Buy America Waiver**

1. **What type of waiver are you applying for?**

Non-Availability Waiver (E.g., the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality)

Unreasonable Cost Waiver (E.g., the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25%)

Public Interest Waiver (E.g., applying the domestic content procurement preference would be inconsistent with the public interest)

1. **Non-availability waivers are time-limited as domestic supplies can change and become more available as time progresses. Therefore, please identify a reasonable, definite time frame for the waiver’s time limit, no longer than two years:**

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| *If seeking a non-availability waiver, provide waiver time limit here; if not, delete the content in this box.*  The requested time limit for this nonavailability waiveris ## months / ## years. |

Award Information

1. **Recipient Name:** Agency/campus name
2. **Unique Entity Identifier (UEI)[[2]](#footnote-3):** Agency/campus UEI number from SAM.gov
3. **Federal Awarding Agency Name:** U.S. Department of Energy
4. **Federal Awarding Bureau/Office Name, if applicable:** Office of State and Community Energy Programs
5. **Federal Award Identification Number:** EE0010078
6. **Federal Assistance Listing Name:** State Energy Program 2022 BIL Award
7. **Federal Assistance Listing Number:** DE-SBI-0002022

Project Overview

1. **Please provide a brief description of the project, its location, and the specific infrastructure involved** (e.g., air source heat pump and/or heat pump water heater).

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| *Provide project description here that includes the project type, site address, and other details.*  This project…. |

Budgeting Overview

1. **Please provide an overview of the funding mechanism for this project.**

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| This project is being partially funded through a grant administered by the Massachusetts Department of Energy Resources, funding for which was provided through the State Energy Program 2022 Bipartisan Infrastructure Law (BIL) award to Massachusetts. |

1. **Is this formula or discretionary spending?**

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| Formula. |

1. **Is there a pre-award authority?**

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| Yes; the Massachusetts Department of Energy Resources. |

1. **Please provide total estimated/actual project cost (which include equipment costs) and infrastructure cost with estimated federal share and recipient cost share breakdowns.**

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| Total equipment costs: |  |
| Total other costs (which may include electrical infrastructure upgrades): |  |
| Total estimated project cost (equipment + other costs): |  |
| DOER Grant amount[[3]](#footnote-4) requested for project: | *List the amount of DOER funds that have been requested.* |
| $ amount of grants/incentives: | *List value(s) of other grants and incentives (e.g. anticipated tax credits and/or utility funding)* |
| Agency/campus cost share: | *List amount of funding the agency or campus is contributing directly, if applicable.* |

Materials Seeking to be Waived

1. **Please list and describe any iron or steel item(s), manufactured goods, and/or construction material(s) the recipient seeks to waive from the Buy America Preference. Recipients should ask bidders for relevant information.**

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| **Name** | **Cost** | **Quantity(ies)** | **Country(ies) of Origin** | **Product Service Codes (PSC)** | **North American Industry Classification System (NAICS) codes** |
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1. **Please provide a detailed justification as to how the non-domestic items(s) is/are essential to the project.**

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| Non-domestic items…. |

Market Research and Outreach

1. **When was the market research conducted?** (This should be current and no longer than the past 18 months)

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| Market research was conducted… *Enter a date range, the start date for which would be the date that the agency submitted the DOER Grant Intent to Submit form and the end date being when the associated quote solicitation period ended*. |

1. **Where/How was the market research conducted?** (e.g., posted a Request for Information on SAM.gov or searched the SBA’s Dynamic Small Business Search Database)

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| Agency/campus name conducted general market research and included inquiries as part of the bid procurement process for the project. |

1. **Did the agency coordinate with manufacturing institutes** **(ITA, I&A; US Commercial Service, Select USA, etc.)?**

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| N/A. |

1. **Who conducted the market research?**

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| Agency/campus name, in conjunction with the Mass. Department of Energy Resources, conducted market research. |

1. **What were the results?**

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| Industry feedback from the procurement process indicated that there were *select the applicable option:* no available products or insufficient quantity of products that meet the BABAA requirements for nonavailability waiver / no BABAA compliant products meeting the reasonable cost thresholds for unreasonable cost wavieron statewide contract. |

1. **Certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.** 24 Executive Order, § 4(c). 25 IIJA, § 70937(c)(2)(A). 26 IIJA, § 70937(c)(2)(D):

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| *Include evidence of outreach (e.g., quotes and information received from vendors on statewide contract) and a short statement describing the evidence.*  By submitting this waiver,agency/campus name, certifies that they made a good faith effort to solicit bids for domestic products by reaching out to number of bids collectedand has attached evidence of this to this waiver. Solicitation of cost and availability quotes was conducted in compliance with the applicable Massachusetts procurement laws. |

Justification

1. **Please provide justification that explains the need for the selected waiver (non-availability or unreasonable cost).** Ensure that these justifications are backed up by evidence of outreach in question 22.

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| *Fill out the applicable content for this waiver based on type and delete the non-applicable language.*  **Nonavailability**: Domestic manufacturing does not currently exist to provide the products requesting a waiver forrequired for the project’s completion. After extensive outreach conducted by agency/campus name and Massachusetts DOER*,* the results of which are described in question 21, no domestic manufacturer was able to provide the materials necessary to meet the new BABAA requirements in a timely manner or quantity. As noted in Presidential Determination No. 2022–18, “without Presidential action under section 303 of the Act, United States industry cannot reasonably be expected to provide the capability for the needed industrial resource, material, or critical technology item in a timely manner.”  **Unreasonable Cost**: Based on market research conducted by agency/campus name, primarily through outreach to eligible vendors on the applicable statewide procurement contract, the inclusion of product(s) requesting a waiver forproduced in the United States will increase the cost of the overall project by more than 25%. |

**Please fill out the table below if your answer to Question 23 includes a justification related to an unreasonable cost.**

*Demonstrate* *how the overall project cost will be increased by more than 25% in the table below.*

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| Estimated Project Cost with non-Domestic Products | Estimated Cost of Domestic Products | Estimated Project Cost with Domestic Products | Percent Increase |
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1. **Please provide the potential impact to the project should the waiver not be granted, the actions the agency has taken to implement BABA and the expected outcome should the waiver be granted.**

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| *Please provide the potential impact here*, *e.g., the agency cannot attain the grant funding required to deploy the project.*  The potential impact(s) include… |

Contact Information

Waiver Form Submitter:

Name (Last, First):

Submitter Email:

Submitter Phone Number:

1. In November of 2021, President Joe Biden created the Build America Buy America Act (BABAA) as part of the Infrastructure Investment and Jobs Act. BABAA was created to encourage the procurement of American made products in infrastructure projects funded in part by the federal government, with the intention that this would strengthen American markets and industries and lead to an influx of American jobs.   [↑](#footnote-ref-2)
2. As of April 4, 2022, unique entity identifiers (UEI) are IDs given to entities that are doing business with the U.S. government. If an entity does not already have a UEI, they must register for one on SAM.gov. Learn more about this process at [SAM.gov | Duns - Sam UEI](https://sam.gov/content/duns-uei). [↑](#footnote-ref-3)
3. The requested DOER Grant amount is the same as the federal cost share, as the program is exclusively federally funded. [↑](#footnote-ref-4)