

BUILD AMERICA, BUY AMERICA ACT FINAL NONAVAILABILITY WAIVER

Project-Specific Nonavailability Waiver of Build America, Buy America Act (BABAA) Requirements for

New Hampshire State Veteran Home Renovation-First Floor Expansion in Tilton, New Hampshire

1. Introduction.

The United States Department of Veterans Affairs (VA) is issuing a nonavailability waiver of the manufactured product requirements of Section 70914 of the Build America, Buy America Act (BABAA) included in the Infrastructure Investment and Jobs Act (P.L. [117- 58](#)) for multiple products for a single project: circuit breakers, panel boards, automatic transfer switches, fire alarm systems, and ductless split systems.

VA has completed its market research efforts and was unable to identify alternative domestic products, which: 1) meet the performance-based specifications, 2) are available in sufficient and reasonably available quantities, and 3) are of a satisfactory quality. VA made every effort to locate domestic alternative products through its waiver process and the public comment period to provide a meaningful opportunity to vet the Agency's interim research.

2. Background.

The Buy America Preference set forth in BABAA section 70914 included in the Infrastructure Investment and Jobs Act (P.L. [117- 58](#)), requires infrastructure projects under Federal financial assistance awards to use all iron, steel, manufactured products, and construction materials that have been produced in the United States.

Under section 70914(b), a Federal agency may waive the application of the Buy America Preference in any case in which it finds that: applying the domestic content procurement preference would be inconsistent with the public interest; 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; or 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%. Under section 70914(c), all waivers must: 1) have a written explanation for the proposed determination, 2) provide a period of not less than 15 days for public comment on the waiver, and 3) submit the waiver to the Office of Management and Budget's (OMB) Made in America Office for review to determine if the waiver is consistent with policy.

3. Summary.

Waiver Type: Nonavailability of domestic products in sufficient and reasonably available quantities or of a satisfactory quality.

Waiver Level and Scope: Project level waiver for multiple products for a single project. No other project will utilize the waiver.

Waiver Description: Project-specific nonavailability waiver of BABAA requirements for the New Hampshire's State Veteran Home in Tilton, New Hampshire, for multiple products in the following product categories: circuit breakers, panel boards, automatic transfer switches, fire alarm, and ductless split systems.

Project Summary: The New Hampshire's Division of Veterans Services (NHDVS) proposes to construct a 13,748 gross square foot (SF), first-floor addition to the existing State Veteran Home in Tilton, New Hampshire. The addition will allow NHDVS to transition 20-double occupancy rooms to single occupancy to promote better infection control practices, as well as improve Veterans' quality of life, dignity, health, and safety.

Length of the waiver: From the effective date of the final waiver until May 31, 2029.

Summary of Items Covered in the Proposed Waiver (including the North American Industry Classification System (NAICS): NHDVS is seeking a waiver for circuit breakers (NAICS code 335313), panel boards (NAICS code 335313), automatic transfer switches (NAICS code 335313), a fire alarm system (NAICS code 238220), and a ductless split system (NAICS code 333415).

4. Description of Efforts Made to Avoid the Need for a Waiver.

NHDVS and VA have made a good faith effort to obtain domestically produced iron and steel, manufactured products, and construction materials. This is both documented in NHDVS's waiver request, and in the description of VA's extensive research efforts listed below.

VA conducted product scouting through a United States Environmental Protection Agency (EPA) contractor that concluded on October 10, 2024. The market research process included a thorough review of the waiver request submission, examination of domestic manufacturer catalogs and other technical data and marketing materials, direct communication with domestic manufacturers, inquiries with regional project officers, and outreach to contractors and engineers with expertise and familiarity with the project. During market research, the EPA contractor contacted:

- a. Nine manufacturers and suppliers for circuit breakers,
- b. Eight manufacturers and suppliers for panel boards,
- c. Five manufacturers and suppliers of automatic transfer switches,
- d. Six manufacturers and suppliers for generator docking stations,
- e. Six manufacturers and suppliers of fire alarm systems,

- f. Six manufacturers and suppliers of ductless split systems.

EPA's highly experienced technical contractor identified these manufacturers in their attempt to find all potential domestic manufacturers of the above-mentioned products. When contacted, three manufacturers for generator docking stations indicated potential to meet the specifications of the project while being BABAA compliant. The project has decided to utilize one of these options and is no longer requesting a waiver for this product. When contacted, one manufacturer for fire alarm systems indicated potential to meet the specifications of the project while being BABAA compliant. Ultimately, the project is not able to utilize this option, as the manufacturer confirmed their system could not fully integrate into the existing Simplex system used for the entire campus. No manufacturers indicated they could produce BABAA-compliant circuit breakers, panel boards, automatic transfer switches, or ductless split-systems.

Remaining manufacturers contacted either confirmed they cannot manufacture these products to meet the project specifications, did not respond to inquiries, or their products are not BABAA compliant. Thus, they are not viable options for this project.

Assessment of Cost Advantage of a Foreign-Sourced Product: Under OMB's October 25, 2023, memorandum, Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure ([OMB M-24-02](#)), Federal 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 public interest waiver.

VA'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.

Anticipated impact if no waiver is issued: Absent a waiver, NHDVS' project is at risk for completion since it will not meet BABAA compliance requirements to obtain up to 65% project funding through the VA's State Home Construction Grant Program. This would adversely affect the New Hampshire's ability to house and serve senior Veterans.

Summary of Public Comments: The proposed waiver was posted on VA's public facing webpage from January 23 – February 7, 2025. Additionally, to satisfy the requirement to publish any BABAA Project Waiver and provide the public with 15 days to submit comments, a notice of the proposed waiver was posted to the Made in America website. VA received no public comments, and therefore, no substantive changes were made between this waiver and the version posted for public comment.

5. Description of Award.

Common Government-wide Accounting Classification (CGAC): 036

Title of Project: New Hampshire State Veteran Home: Renovation-First Floor Expansion, Tilton, New Hampshire

Infrastructure Project Description and Location: New Hampshire's Division of Veterans Services proposes to construct a 13,748 gross square foot, first-floor addition to the existing State Veteran Home in Tilton, New Hampshire

Recipient Name: State of New Hampshire's Division of Veterans Services

Unique Entry Identifier (UEI): TLHGVMRVHLG3

Federal Financial Assistance Program: State Veterans Home Construction Grant Program (64.005)

Federal Financial Application Identifier (FAI): FAI 33-011

Federal Financial Assistance Listing Name: [64.005 Grants to States for Construction of State Home Facilities](#)

Federal Financial Assistance Funding Amount: \$8,807,500.00

Total Cost of Infrastructure Expenditures: \$13,550,000.00

Total Amount Applicable to the Waiver: \$63,830

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Douglas A. Collins
Secretary of Veterans Affairs
May 8, 2025