Pre-decisional DRAFT

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Solicitation of Public Comment for Project-Specific Build America, Buy America Nonavailability Waiver Proposal

SUBJECT: Under Evaluation: Project-Specific Nonavailability Waiver of Build America Buy America Act (BABA) Requirements to the Vita Nova Supportive Housing Project for Rear-Flow Floor-Mount Toilets (HUD Waiver #W-0000408)

Introduction

This solicitation of public comment by the U.S. Department of Housing and Urban Development (HUD) is to evaluate a BABA waiver request submitted by an assistance recipient based on nonavailability of a single product for a single project.

This solicitation of public comment does not represent a final agency decision. The purpose of this proposal is to inquire whether potential alternative domestic products may be available that were not identified by the assistance recipient or through HUD's domestic product research efforts, and whether other factors should be considered in the evaluation of a waiver.

HUD has completed its market research efforts and was unable to identify alternative domestic products meeting the technical specifications of the project, in sufficient and reasonably available quantities and of a satisfactory quality. Through this public comment period, commenters may provide information that indicates a waiver may not be needed. For example, if a specified item is found to be domestically available, HUD would not issue a final waiver.

Solicitation of Public Comment

The proposed waiver will be posted on HUD's public facing webpage and a notice of the proposed waiver will also be posted to the Made in America website, to satisfy the requirement to publish any BABA project waiver and provide the public with fifteen (15) days to submit comments. HUD is seeking public and industry comments from all interested parties and encouraging current manufacturers of the subject products to submit comments regarding potential availability. Public comments on this waiver should be submitted to BuildAmericaBuyAmerica@hud.gov. Please reference HUD Waiver #W-0000408 in the subject line.

Background

The Buy America Preference set forth in section 70914 of BABA included in the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. No. 117-58), requires that all iron, steel, manufactured products, and construction materials used for infrastructure projects under Federal financial assistance awards be produced in the United States.

Under section 70914(b), HUD may waive the application of the Buy America Preference (BAP), 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 would increase the cost of the overall project by more than twenty-five (25) percent. All waivers must have a written explanation for the proposed determination; provide a period of not less than fifteen (15) days for public comment on the waiver; and be submitted to the Office of Management and Budget's (OMB) Made in America Office for review to determine if the waiver is consistent with policy.

Summary

Proposed Waiver: HUD is soliciting comments regarding whether to issue a project waiver of the requirements of section 70914 of BABA included in the IIJA, for rear-flow floor-mount toilets in an infrastructure project funded through the HOME Investment Partnerships Program (HOME).

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 rear-flow floor-mount toilets for a single project. No other project will utilize the waiver.

Proposed Waiver Description: Project-specific nonavailability waiver of BABA requirements to the Vita Nove Supportive Housing project in Oklahoma City, Oklahoma for rear-flow floor-mount toilets.

Project Summary: The project is in Oklahoma City, Oklahoma. The project consists of the Adaptive reuse/rehabilitation of an existing property into a 76-unit permanent supportive housing development.

Length of the Waiver: From the effective date of the final waiver until the completion of the project, which is anticipated to be December 28, 2027.

Items Covered in Waiver: The City of Oklahoma City is seeking a waiver for rear-flow floor-mount toilets, as described in detail below:

- **Name of Product 1:** Rear-Flow Floor-Mount Toilet
  - **NAICS:** 327110
  - **PSC:** 4510
  - **Technical Specifications:** Quantity 77; two-piece elongated vitreous toilet; floor mount with rear/wall outlet; 4-inch rough-in; 1.0 gpf; pressure-assist/FLUSHMATE flushing system; manual polished-chrome trip lever; Comfort Height/ADA configuration; 35–80 psi static supply pressure; approximately 31 in. deep x 21-1/4 in. wide x 31-1/4 in. high.

Description of Efforts Made to Avoid the Need for a Waiver

Both the grantee and HUD made every effort to obtain a domestically produced rear-flow floor-mount toilets.

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The grantee completed market research September 2026 which consisted of outreach to three (3) manufacturers or suppliers of rear-flow floor-mount toilets. None of the manufacturers or suppliers were able to provide BABA-compliant products that met the technical specifications of the project.

HUD conducted an online search of manufacturers and suppliers and did not locate any manufacturers or suppliers that could provide BABA-compliant products.

Anticipated Impact if No Waiver is Issued

Failure to grant a waiver for this project would result in the inability of the developer to install the required rear-flow floor-mount toilets.

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 public interest waiver. HUD has concluded that this assessment is not applicable to this waiver as this waiver is not based on the cost of foreign-sourced products.

Description of Award

Agency: United States Department of Housing and Urban Development (HUD)

Common Governmentwide Accounting Classification (CGAC) Code: 086

Title of Project: Vita Nova Supportive Housing Project

Recipient Name: City of Oklahoma City

Unique Entity Identifier (UEI): D3MUME8J5T25

Federal Award Identification Number (FAIN): M-24-MC-40-0203

Financial Assistance Listing Name: HOME Investment Partnerships Program (HOME)

Assistance Listing Number: 14.239

Federal Financial Assistance Funding Amount: $1,200,000

Total Estimated Infrastructure Expenditures: $13,621,836