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 95 Everett Affordable Housing Project for HVAC Equipment (HUD Waiver #W-0000266)

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 multiple products 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-0000266 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 heat pumps and energy recovery ventilators 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 multiple products for a single project. No other project will utilize the waiver.

Proposed Waiver Description: Project-specific nonavailability waiver of BABA requirements to the 95 Everett affordable housing project in Boston, Massachusetts for heat pumps and energy recovery ventilators.

Project Summary: The project is in Boston, Massachusetts. The project consists of the construction of 88 affordable rental housing units.The project is located at 95 Everett St., Boston, Massachusetts.

Length of the Waiver: From the effective date of the final waiver until the completion of the project, which is anticipated to be August 31, 2028.

Items Covered in Waiver: The Executive Office of Housing and Livable Communities is seeking a waiver for heat pumps and energy recovery ventilators, as described in detail below:

- **Name of Product 1:** Air-source heat pumps
  - **NAICS:** 333415
  - **PSC:** 4120
  - **Technical Specifications:** Indoor unit specs: self-contained, packaged, factory-assembled, pre-wired unit consisting of cabinet, supply fan, evaporator coil, and controls; wired for single power connection with control transformer. Evaporator coils specs: copper tube aluminum fin assembly, galvanizes or polymer drain, drain connections, refrigerant piping connections, restricted distributor or hemostatic expansion valve, SEER2 = 17.00, EER2 = 11.70, HSPF2 = 9.0, COP @ 47F = 3.32, COP @ 5F = 2. In accordance with AHRI 210/240 and UL 207.

- **Name of Product 2:** Mini split heat pumps
  - **NAICS:** 333415
  - **PSC:** 4120
  - **Technical Specifications:** Self-contained, packaged, matched factory-engineered and assembled, pre-wired indoor and outdoor units. Air-source electric heat pump located in outdoor unit with evaporator, auxiliary electric heat. Provide refrigerant lines internal to units and between indoor and outdoor units. Factory cleaned, dried, pressurized and sealed, with insulated suction line. SEER2 = 17.00, EER2 = 11.70, HSPF2 = 9.0, COP @ 47F = 3.32, COP @ 5F = 2. UL listed.
- **Name of Product 3:** Ducted heat pumps
  - **NAICS:** 333415
  - **PSC:** 4120
  - **Technical Specifications:** Outdoor unit specs: self-contained, packaged, pre-wired unit consisting of cabinet, with compressor and condenser; in accordance with ASHRAE Std 23.1 and UL 207. Air cooled condenser specs: aluminum fin and copper tube coil, AHRI 520 with direct drive axial propeller fan resiliently mounted, galvanized fan guard. Accessories specs: filter drier, high pressure switch, low pressure switch, service valves and gauge ports, thermometer well, thermostatic expansion valves. Operating control specs: control by room thermostat to maintain temperature. SEER2 = 17.00, EER2 = 11.70, HSPF2 = 9.0, COP @ 47F = 3.32, COP @ 5F = 2.
- **Name of Product 4:** Energy Recovery Ventilator (ERV)
  - **NAICS:** 333413
  - **PSC:** 4120
  - **Technical Specifications:** Provide x731 stationary core x731 air-to-air exchanger, prefabricated packaged system designed by manufacturer. AHRI 1060 (IP) compliant. Hinged and/or screwed access panels on front. Lifting holes at the unit base. Welded extruded aluminum tubular frame capable of supporting components and casings. Permanent name plate listing manufacturer mounted inside door near electrical panel. System must meet all energy efficiency requirements, including sensible recovery efficiency and fan power usage, when evaluated as part of the building envelope model, to meet Phius Passive House certification standards, which are required by the project's funding sources and city building permits.

Description of Efforts Made to Avoid the Need for a Waiver

Both the grantee and HUD made every effort to obtain domestically produced heat pumps and energy recovery ventilators.

<u>Heat Pumps</u>

The grantee completed market research between September 2025 and April 2026, which consisted of extensive research, including outreach to three domestic manufacturers of comparable products,. Despite this outreach, no BABA-compliant heat pumps were sourced. These findings are consistent with other market research conducted for similar products in the last six months.

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The grantee has determined that the allowable De Minimis limit for the project has been exhausted, requiring the approval of a Nonavailability Waiver to allow the project to proceed.

HUD conducted additional market research for several manufacturers, including Daikin, Mitsubishi, and Samsung, and did not locate any BABA-compliant products that would meet the technical specifications of this project.

Energy Recovery Ventilators

The development team completed market research in June 2026, which included outreach to three domestic manufacturers/vendors of comparable products. Despite this outreach, no BABA-compliant ERVs were sourced. These findings are consistent with other market research conducted for proposed nonavailability waivers for similar products in the last six months.

HUD conducted additional market research and identified some BABA-compliant manufacturers of ERVs, but available products do not meet the technical specifications of this project.

Anticipated Impact if No Waiver is Issued

Failure to grant a waiver for this project would result in significant delays and costs for the project, including possible termination of the project, and the potential loss of eighty-eight units of affordable housing that will serve low-income residents in Boston, Massachusetts.

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: 95 Everett Affordable Housing Project

Recipient Name: Executive Office of Housing and Livable Communities

Unique Entity Identifier (UEI): G9PBNNBRK2N9

Federal Award Identification Number (FAIN): M24-SG250100

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

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Assistance Listing Number: 14.239

Federal Financial Assistance Funding Amount: $2,500,000.00

Total Estimated Infrastructure Expenditures: $57,536,533.00

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