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 Cedar View Apartments Affordable Housing Development for Flashing, Freight Elevators, Fire-Resistant Glass, Ductless Split Systems, Wall Hung Sinks, and a Door Access Control System (HUD Waiver #W-0000350)

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 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-0000350 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 multiple products 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 Cedar View Apartments affordable housing project in Austin, Minnesota for multiple products.

Project Summary: The project is in Austin, Minnesota. The project consists of the construction of a 40-unit apartment building. The building is three stories and 62,315 gross square feet. In addition to the apartment units, the building includes property management office space, a community room, mechanical rooms, and shared laundry rooms.

Length of the Waiver: From the effective date of the final waiver until the completion of the project, which is anticipated to be September 30, 2028.

Items Covered in Waiver: The Minnesota Housing Finance Agency is seeking a waiver for multiple products, as described in detail below:

- **Name of Product 1:** Self-Adhered Flashing
  - **NAICS:** 238170
  - **PSC:** 5650
  - **Technical Specifications:** The flashing is a single-sided, self-adhered flashing that combines a top sheet with a 100% butyl-based adhesive layer. It withstands up to nine months of UV exposure, can be installed at temperatures as low as 25°F, and is available in 4-inch by 150-foot and 9-inch by 125-foot rolls.

- **Name of Product 2:** Traction Elevator
  - **NAICS:** 333921

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- **PSC:** 3960
- **Technical Specifications:** Machine-room-less traction elevator with a maximum travel of 48 feet, maximum speed of 150 feet per minute, and maximum of four landings. Available configurations accommodate capacities from 2,000 to 3,500 pounds, with car heights of 7 feet 6 inches, 8 feet, or 9 feet and entrance heights of 7 or 8 feet.

- **Name of Product 3:** Fire-resistant glass
  - **NAICS:** 238150
  - **PSC:** 9340
  - **Technical Specifications:** 128 square feet of fire-protective rated glass with a 20- to 45-minute rating and 10 square feet of fire-resistive rated glass with a 45-minute rating.

- **Name of Product 4:** Ductless split system
  - **NAICS:** 333415
  - **PSC:** 4120
  - **Technical Specifications:** Nominal capacity of 12,000 Btu/h. The system uses R-454B [SR3.1][LB3.2]refrigerant and includes four indoor fan speeds, turbo mode, auto-restart, quiet indoor and outdoor operation, and anti-corrosive coatings.

- **Name of Product 5:** Wall hung sink
  - **NAICS:** 327110
  - **PSC:** 4510
  - **Technical Specifications:** Wall-hung back-splash sink is a vitreous china, ADA-compliant fixture measuring 12½ inches high, 20¼ inches wide, and 18¼ inches deep, with a 15-by-10-inch basin. It includes two integral self-draining soap dishes, a rear overflow, an integral backsplash shield, and configurations for a single hole, 4-inch centers, or 8-inch centers.

- **Name of Product 6:** Door access control system
  - **NAICS:** 561621
  - **PSC:** 6350
  - **Technical Specifications:** Controls two doors, supports up to four readers, and can expand to 64 openings. It operates on 12–24 VDC and supports Ethernet, OSDP, Wiegand, encryption, and anti-passback functions. A 12-VDC indoor/outdoor card reader supporting physical cards, mobile credentials, Bluetooth, NFC, and secure OSDP communication. The 40 NKS model includes a keypad.

Description of Efforts Made to Avoid the Need for a Waiver

Both the grantee and HUD made every effort to obtain a domestically produced Flashing, Freight Elevators, Fire-Resistant Glass, Ductless Split Systems, Wall Hung Sinks, and a Door Access Control System.

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The grantee completed market research between February and October 2026 which consisted of outreach through the MEPNN Supplier Scouting Program. 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 Flashing, Freight Elevators, Fire-Resistant Glass, Ductless Split Systems, Wall Hung Sinks, and a Door Access Control System.

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: Cedar View Apartments Affordable Housing Project

Recipient Name: Minnesota Housing Finance Agency

Unique Entity Identifier (UEI): KGAPBAMK58L3

Federal Award Identification Number (FAIN): M-24-SG-27-0100

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

Assistance Listing Number: 14.239

Federal Financial Assistance Funding Amount: $4,000,000.00

Total Estimated Infrastructure Expenditures: $18,600,000.00