

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Nonavailability Waiver of Build America Buy America Act Provisions for Select Iron and Steel Products Used in the Riverplace Park Playground project, City of Port St. Lucie, Florida (HUD Waiver #W-0000017)

1. Summary

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

Common Governmentwide Accounting Classification (CGAC) Code: 086

Waiver: HUD is proposing a nonavailability waiver of the Buy America Preference (BAP) as applied to iron and steel products for select steel playground equipment incorporated into the Riverplace Park Playground project in the City of Port St. Lucie, Florida.

Applicability: This proposed waiver action permits the use of non-domestic iron and steel products in the Riverplace Park Playground project in the City of Port St. Lucie, Florida. The waiver would apply to eligible expenditures incurred by the recipient on or after the effective date of the final waiver for the period that the waiver is active.

Waiver Type: Nonavailability Waiver of the Buy America Preference (BAP) for Iron and Steel products.

Summary of Items Covered in Waiver: The waiver is for three specialized pieces of playground equipment predominantly comprised of steel:

- 2-Bay Swing set frame with 2 infant swings, 1 you and me swing, and 1 duo swing
- 2-Bay Swing set frame with 1 Basket swing, and 2 belt swings
- Rocket Roller Play System

Length of the Waiver: This waiver will be in effect upon approval and will remain in effect until December 31, 2025, the expected completion date of this project.

2. Background

The Buy America Preference set forth in section 70914 of the Build America, Buy America Act included in the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58), requires 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), the 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%. All waivers must have a written explanation for the proposed determination; provide a period of not less than 15 days for public comment on the waiver; and

submit the waiver to the Office of Management and Budget Made in America Office for review to determine if the waiver is consistent with policy.

3. Description of Award

Title of Project: Riverplace Park Playground

Infrastructure Project Description and Location: Construction of a playground in a low-income neighborhood. The playground will be located at 690 NW Bayou Country Road, Port St. Lucie, Florida 34983.

Recipient Name: City of Port St. Lucie, Florida

Unique Entity Identifier (UEI): X24XLGNLM123

Federal Award Identification Number (FAIN): B24MC120038

Federal Financial Assistance Program (FFA): Community Development Block Grant (CDBG)

Assistance Listing Name: Community Development Block Grants/Entitlement Grants

Assistance Listing Number: 14.218

Federal Financial Assistance Funding Amount: \$250,000.00

Total Infrastructure Amount: \$472,000.00

4. Description of Covered Items

Iron and Steel Products: The waiver seeks a waiver of the BAP for the following iron and steel products. The products must meet all the City's playground design requirements, including accessibility to children with various physical, sensory, and cognitive needs. The equipment must also meet the safety standards set forth by the Consumer Product Safety Commission (CPSC) and the American Society for Testing and Materials (ASTM), including features such as shock-absorbing surfaces, secure anchoring systems, and smooth, rounded edges to minimize injury risks. Finally, the materials used must be of an acceptable quality to ensure the equipment's longevity and reduce long-term maintenance costs.

- 2 Bay Swing set frame with 2 infant swings, 1 you and me swing, and 1 duo swing
NAICS: 423910 Sporting and Recreational Goods and Supplies Merchant Wholesalers
PSC: 7830 Recreational and Gymnastic Equipment
Cost: \$8,378.66
- 2-Bay Swing set frame with 1 Basket swing, and 2 belt swings
NAICS: 423910 Sporting and Recreational Goods and Supplies Merchant Wholesalers
PSC: 7830 Recreational and Gymnastic Equipment
Cost: \$8,102.64
- Rocket Roller Play System
NAICS: 423910 Sporting and Recreational Goods and Supplies Merchant Wholesalers

PSC: 7830 Recreational and Gymnastic Equipment
Cost: \$6,544.44

Total cost of materials for which a waiver is being sought: \$23,025.74.

5. Waiver Justification Summary

Waiver Justification Summary: The City of Port St. Lucie is requesting a nonavailability waiver for select steel playground equipment incorporated into the Riverplace Park Playground project. The project has a total cost of \$472,000, including total FFA of \$250,000 in Fiscal Year (FY) 2024 CDBG funds. Pursuant to HUD's "Public Interest Phased Implementation Waiver for FY 2022 and 2023 of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" ("HUD Phased Implementation Waiver") (88 FR 17001), the BAP applies to all iron and steel products and specifically listed construction materials¹ incorporated into this project. The HUD Phased Implementation Waiver waives the BAP for any not listed construction materials and manufactured products used in this project.

The City is seeking a non-availability waiver for the identified products to allow for construction of the Riverplace Park Playground, located at 690 NW Bayou Country Road, Port St. Lucie, Florida 34983. This project will construct a playground within the low-to-moderate income area of census tract 381502, Block Group 2. The products used in the playground must meet accessibility standards required by the City.

Anticipated Impact if No Waiver is Issued:

Failure to grant a waiver for this project would mean that the City cannot complete the playground project, impacting the city's ability to deliver this critical amenity to a low-income neighborhood.

Description of Efforts Made to Identify Domestic Products: The City contacted three national playground equipment suppliers, none of which were able to certify that their products met the design requirements of the project and were compliant with the BAP. HUD has reviewed the grantee's market research and determined that it is consistent with the due diligence requirements established for CPD grantees in *CPD Implementation Guidance for the Build America, Buy America Act's Buy America Preference* (Notice CPD-25-01) and consistent with MIAO guidance. HUD has also conducted its own supplemental market research and was unable to locate any suitable BABA compliant products.

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

¹ See the HUD Phased Implementation Waiver at <https://www.federalregister.gov/documents/2023/03/21/2023-05698/public-interest-phased-implementation-waiver-for-fy-2022-and-2023-of-build-america-buy-america> for definitions of "specifically listed" and "not listed" construction materials.

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.

Solicitation for Comments: 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 Build America, Buy America Act 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. The email subject line should reference HUD Waiver #W-0000017. For more information on the Build America, Buy America Preference, please reference https://www.hud.gov/program_offices/general_counsel/build_america_buy_america.