

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Proposed Nonavailability Waiver of Build America Buy America Act Provisions for Water Flow Devices Used in the Ranleigh Court and Waverly Winds Affordable Housing Projects in Howard County, Maryland

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 section 70914 of the Build America, Buy America Act (BABA) included in the Infrastructure Investment and Jobs Act (Pub. L. No. 117-58) as applied to Federal financial assistance (FFA) awards to Howard County, Maryland and Enterprise Community Development, LLC (Grantees) for construction of the Ranleigh Court and Waverly Winds affordable housing projects.

Applicability: This proposed nonavailability waiver would permit the Grantees to purchase certain water flow devices that are manufactured in the United States but do not meet the standard established at 2 CFR 184.3 that the cost of the components of the manufactured product that are produced in the United States is greater than 55 percent of the total cost of all components of the manufactured product. 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 certain manufactured products.

Summary of Items Covered in Waiver: The waiver is for the following manufactured products that are required to meet the technical specifications of the project, as described in greater detail in Section 3:

- Water Flow Devices
 - Butterfly Valves
 - Backflow Device, Double Check Detector Assembly
 - Backflow Device, Double Check Valve

Length of the Waiver: This waiver will be in effect upon approval and will remain in effect until September 30, 2026, 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 that all iron, steel, manufactured products, and construction materials used for infrastructure projects funded through 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 would 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 be submitted 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: Ranleagh Court and Waverly Winds Affordable Housing Projects

Infrastructure Project Description and Location: The Ranleagh Court and Waverly Winds affordable housing development is funded through two HUD FFA awards: a \$5,848,000 Section 108 loan guarantee and a \$850,000 Community Project Funding grant. The FFA will be used to construct three new multifamily residential buildings located at Ranleagh Court and Waverly Winds in Columbia, Maryland, and to complete associated public and utility infrastructure, relocation, remediation, and demolition activities. The project will comprise of 205 residential units and amenity spaces across the three buildings. Ranleagh Court is located at 6001 Turnabout Lane and the Waverly Winds buildings are located at 5587 and 5597 Cedar Lane.

Recipient Names: Howard County, Maryland and Enterprise Community Development, LLC

Unique Entity Identifier (UEI): LJPAM296M118 and GRNJHPTLBVJ3

Federal Award Identification Number (FAIN): B24UC240012, B24CPMD1041

Assistance Listing Name: Community Development Block Grants Section 108 Loan Guarantees and Economic Development Initiative, Community Project Funding, and Miscellaneous grants

Assistance Listing Number: 14.248, 14.251

Federal Financial Assistance Funding Amount: \$6,698,000

Total Estimated Infrastructure Expenditures: \$68,014,916

4. Description of Covered Items

- Water Flow Devices
 - NAICS: 238220 Plumbing, Heating, and Air Conditioning Contractors
 - PSC: 4820 Valves, Nonpowered
 - Quantity:
 - 7 butterfly valves
 - 3 backflow devices, double check detector assembly
 - 3 backflow devices, double check valve
 - Cost: \$36,081
 - Country of Origin: United States

- Technical Specifications: Plumbing fittings and fixtures appropriate for a 4-story, R2 use-group multi-family building. Fixtures must be water-conserving and WaterSense. All components must comply with the International Plumbing Code (IPC 2021). The project is also being certified through Energy Star, Zero Energy Ready Home (ZERH), and Enterprise Green Communities and all requirements therein for water conservation measures must be met.

5. Waiver Justification Summary

Waiver Justification Summary: The Grantees are requesting a nonavailability waiver for certain water flow devices enumerated above required for construction of the Ranleagh Court and Waverly Winds affordable housing project. The Grantees have identified products that are partially compliant in that they are produced in the United States. However, they do not meet the standard established at 2 CFR 184.3 that the cost of the components of the manufactured product that are produced in the United States is greater than 55 percent of the total cost of all components of the manufactured product. A nonavailability waiver is justified in this case to maximize the use of products manufactured in the United States, even though they are only partially compliant with the BAP.

The Grantees have made extensive efforts to comply with BABA requirements, including adjusting project specifications to use BABA-compliant products where feasible. The Grantees have conducted market research beginning in October 2024 to identify BABA-compliant products where possible and narrow the scope of this non-availability waiver to only those items that cannot be sourced domestically. The project is not covered under any existing HUD general waivers, and the Grantees have applied the five percent *de minimis* limit allowed under HUD's "Public Interest De Minimis and Small Grants Waiver of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (87 FR 76502) to other non-compliant materials used in the project.

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 FY24 CPF funds are subject to the BAP only for iron and steel products. However, the project's Section 108 loan commitment date, which is the date of obligation for Section 108 funds, was September 24, 2024. Therefore, the BAP applies to all iron and steel, construction materials, and manufactured products used in the project, unless a project-specific waiver is granted.

Anticipated Impact if No Waiver is Issued: Failure to grant a waiver for these products would result in project delays and increased costs. Project financing could be rendered non-viable, resulting in the loss of 205 units of affordable housing that will primarily serve low- and moderate-income families in Howard County.

Description of Efforts Made to Identify Domestic Products: The Grantees made substantial efforts to meet 2 CFR Part 184 requirements, including reasonable searches with multiple manufacturers and suppliers. For each of the items listed, the Grantees consulted a minimum of 3

suppliers or manufacturers for each product listed. None of the contacted suppliers or manufacturers located products that met the technical specifications of the project and were compliant with BABA. The documentation of this market research provided by the Grantees was reviewed by HUD and is consistent with HUD Office of Community Planning and Development (CPD) guidance to demonstrate the need for a non-availability waiver.

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.

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 the title of this waiver. For more information on the Buy America Preference, please reference <https://www.hud.gov/sites/dfiles/OCHCO/documents/cpd-25-01.pdf>.