

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 Poverello Center Veterans Housing Project for Variable Refrigerant Flow System (HUD Waiver #W-0000088)**

#### **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](mailto:BuildAmericaBuyAmerica@hud.gov). Please reference HUD Waiver #W-0000088 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 variable refrigerant flow (VRF) system in an infrastructure project funded through the Community Development Block Grant (CDBG) program.

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 a single product for a single project. No other project will utilize the waiver.

Proposed Waiver Description: Project-specific nonavailability waiver of BABA requirements to the Poverello Center veterans housing project in Missoula, Montana, for a VRF system.

Project Summary: The project is in Missoula, Montana. The project consists of the deconstruction of the north and west wings of an existing structure and the construction of sixteen (16) transitional housing units for veterans.

Length of the Waiver: From the effective date of the final waiver until September 30, 2026.

Items Covered in Waiver: The City of Missoula is seeking a waiver for a VRF system, as described in detail below:

- VRF System
  - Category: Manufactured Product
  - Cost: \$70,000
  - Quantity: 1 system
  - PSC: 4130 – Refrigeration and Air-Conditioning Components
  - NAICS: 333415 – Air-Conditioning and Warm Air Heating Equipment
  - Country of Origin: Japan
  - Technical Specifications: 192,000 BTU nominal cooling capacity; 215,000 BTU nominal heating capacity; 23~126F cooling operating range; -13~60F heating operating range; R410A x 26.0 lbs refrigerant; IEER efficiency rating 19.8/22.2

## Description of Efforts Made to Avoid the Need for a Waiver

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Both the grantee and HUD made every effort to obtain a domestically produced VRF system.

The grantee completed market research between June and September 2025 which consisted of outreach to three (3) manufacturers or suppliers of VRF systems. 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. These findings are consistent with other market research that HUD has conducted for additional proposed waivers for similar products in the last six (6) months, including waivers for the Illinois Housing Development Authority and Enterprise Community Development/Howard County, Maryland.

**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. As no suitable BABA-compliant alternatives can be sourced within a reasonable timeframe to align with the project's construction and performance deadlines, any attempts to wait until systems are available risks substantial delays and increased costs to the project. If no waiver is issued, the project will be forced to downgrade the entire HVAC system to a much less efficient and regressed system that will not provide the quality or sustainability that is needed to meet the specifications and performance criteria required for this housing project.

HUD additionally believes this waiver is justified because most items used in this project will be compliant with BABA. This waiver is for items whose total value is approximately 1 percent of the total infrastructure expenditure for this project. Approval of this waiver will ensure that the remainder of materials costs support BABA-compliant manufacturers, consistent with the intent of BABA.

**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: Poverello Center Veterans Housing Project

Recipient Name: City of Missoula

Unique Entity Identifier (UEI): NBMKDLVHBMF1

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Federal Award Identification Number (FAIN): B-25-MC-30-0003

Financial Assistance Listing Name: Community Development Block Grant (CDBG)

Assistance Listing Number: 14.218

Federal Financial Assistance Funding Amount: \$520,234.00

Total Estimated Infrastructure Expenditures: \$6,211,119.00