

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 Voyager's Village Affordable Housing Project for Circuit Breakers (HUD Waiver #W-0000040)

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. Please reference HUD Waiver #W-0000040 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 mini-split heat pumps used in an infrastructure project funded through the HOME Investment Partnerships (HOME) 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 Voyager's Village Affordable Housing project in Salem, Oregon, for circuit breakers.

Project Summary: The project is in Salem, Oregon. The project consists of the construction of a multifamily building with forty-one (41) low- to moderate-income housing units. The project will be located at 2210 Commercial Street, NE.

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

Items Covered in Waiver: The City of Salem is seeking a waiver for circuit breakers, as described in detail below:

- Circuit Breakers:
 - Category: Manufactured Product
 - Cost: \$45,000.00
 - Quantity: (2) 800A term boxes, (2) 6-inch extension, (7) 5G 3PH-1PH meter stacks, (2) 3G 3PH-1PH meter stacks, (41) 2P-125A 120/240V breakers, (41) 2P-120/240V- 40A breakers, (164) 120/240V 20A breakers, (82) 120/240V 15A breakers, (95) 15- amp plugs, (41) pole locks, (41) padlocks
 - PSC: 5925 – Circuit Breakers
 - NAICS: 335313 - Air circuit breakers manufacturing
 - Country of Origin: Mexico
 - Technical Specifications: The circuit breakers must comply with all applicable standards, including Underwriters Laboratories (UL), National Electrical Manufacturers Association (NEMA), National Fire Protection Agency (NFPA) 70,

National Electric Code (NEC), American National Standards Institute (ANSI), and Restriction of Hazardous Substances (RoHS).

Description of Efforts Made to Avoid the Need for a Waiver

Both the grantee and HUD made every effort to obtain domestically produced circuit breakers prior to submission of this waiver request.

The grantee completed market research between April and July 2025 which consisted of outreach to three (3) manufacturers or suppliers of circuit breakers. Through that market research, the grantee was able to locate residential load centers that are BABA-compliant, therefore reducing the potential scope of this waiver. However, the grantee was unable to locate BABA-compliant circuit breakers that connect to the load centers. None of the manufacturers or suppliers were able to provide BABA-compliant products that met the technical specifications of the project. Similarly, HUD conducted an online search of manufacturers and suppliers and did not locate any manufacturers or suppliers that could provide BABA-compliant circuit breakers.

Anticipated Impact if No Waiver is Issued

Failure to grant a waiver for these products would result in the termination of the project, because electrical components systems are a critical item for all residential units.

HUD further 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 less than 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, “Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure,” 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: Voyager’s Village Affordable Housing Project

Recipient Name: City of Salem

Pre-decisional DRAFT

Unique Entity Identifier (UEI): D8X6 WH1D 6N65

Federal Award Identification Number (FAIN): M24-MC410204

Financial Assistance Listing Name: HOME Investment Partnerships Program

Assistance Listing Number: 14.239

Federal Financial Assistance Funding Amount: \$600,000.00

Total Estimated Infrastructure Expenditures: \$14,300,000.00

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