

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBJECT: Final Project-Specific Nonavailability Waiver of Build America Buy America Act (BABA) Requirements to the 100 Flanders Street Affordable Housing Project for a Variable Refrigerant Flow System (HUD Waiver #W-0000173)

Introduction

The U.S. Department of Housing and Urban Development (HUD) is issuing a final BABA waiver to an assistance recipient based on nonavailability of a single product for a single project.

Solicitation of Public Comment

The proposed waiver was posted on HUD's public facing webpage and a notice of the proposed waiver was posted to the Made in America website from July 20, 2026, through August 4, 2026, thus satisfying the requirement to publish any BABA project waiver and provide the public with fifteen (15) days to submit comments. HUD did not receive any public comments on this waiver during the public comment period. Therefore, no changes were made to the proposed waiver, except to replace references to the “proposed waiver” with references to the “final waiver.”

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

Final 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 a variable refrigerant flow (VRF) system in an infrastructure project funded through the HOME Investment Partnerships Program (HOME) and the Housing Trust Fund (HTF).

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.

Waiver Description: Project-specific nonavailability waiver of BABA requirements to the 100 Flander Street affordable housing project in Manchester, New Hampshire for a VRF system.

Project Summary: The project is in Manchester, NH. The project consists of the construction of one hundred and twenty-six (126) affordable housing units. The project will consist of one (1) building located at 100 Flanders Street, in Manchester NH, the property is currently a parking lot with a former address is 45 Orange Street. This project is being developed in partnership with The City of Manchester who is seeking to create new residential opportunities with a priority for affordable units at the city owned Pearl Street parking lot.

Length of the Waiver: From August 31, 2026, until the completion of the project, which is anticipated to be June 12, 2028.

Items Covered in Waiver: The New Hampshire Housing Finance Authority and the City of Manchester are seeking a waiver for a VRF system, as described in detail below:

Name of Product 1: Variable Refrigeration Flow (VRF) Heat Pump System

NAICS: 333415

PSC: 4147

Technical Specifications: Direct expansion VRF HVAC systems with variable capacity in response to carrying cooling and heating loads. Shall consist of multiple indoor units, HRCUs, outdoor units, piping, controls, and electrical power. Shall be heat recovery type VRF system. Electrical components must be listed and labeled according to NFPA 70, certifications must include ANSI/UL STD 1995, Electrical Testing Labs (ETL) with cETL label, wiring per National Electric Code (NEC), produced in an ISO 9001 and ISO 14001 facility.

Description of Efforts Made to Avoid the Need for a Waiver

The owners MEP Engineer researched several options for the HVAC system, and it was determined that the VRF system is the ideal option that meets the owner's needs for energy efficiency, de-carbonization, physical space compliance, maintenance support, and regional operations in extreme weather in this geographic region. The contractor made every effort to obtain a domestically produced VRF System. The contractor completed market research between September 2025 and January 2026 which consisted of internet research, outreach to ten (10) manufacturers or suppliers of VRF Systems and local industry groups and submitted requests with NIST.

None of the manufacturers or suppliers were able to provide BABA-compliant products that met the technical specifications of the project. The contractor submitted a supplier scouting request to NIST to provide alternatives Early December 2025. No alternatives were identified. The contractor also contacted industry groups to determine if they were aware of any manufacturers of BABA-compliant products. Industry groups were not aware of any domestic manufacturers that met the requirements.

HUD validated the grantee's market research and consulted its own market research information, including ClimateMaster, Hastings HVAC, Tithe, Fujitsu, and Johnson Controls, in addition to the manufacturers already consulted by the grantee. HUD determined that there are no BABA-compliant products that meet the technical specifications of this project.

Anticipated Impact if No Waiver is Issued

Failure to grant a waiver for these products would result in project delays, including potential failure to meet Low Income Housing Tax Credit (LIHTC) deadlines and significantly increased costs. Project financing could be rendered non-viable, resulting in the loss of 126 units of affordable housing that will primarily serve low- and moderate-income families in Manchester NH.

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: 100 Flanders Street Affordable Housing Project

Recipient Name: New Hampshire Housing Finance Authority; City of Manchester

Unique Entity Identifier (UEI): JBJNS6KTGE86; Z93ZBNUC43X8

Federal Award Identification Number (FAIN): F24-SG330100; M-25-MC-33-0200

Financial Assistance Listing Name: Housing Trust Fund (HTF); HOME Investment Partnerships Program (HOME)

Assistance Listing Number: 14.275; 14.239

Federal Financial Assistance Funding Amount: \$5,280,729 (\$2,836,729 in HOME, Manchester + \$2,444,000 in HTF, NHHFA)

Total Estimated Infrastructure Expenditures: \$34,602,320