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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 331 Cumberland Avenue and Pettengill Pines Affordable Housing Projects for HVAC Equipment (HUD Waiver #W-0000095)

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 multiple products for multiple projects funded by the same Federal financial assistance (FFA) award.

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-0000095 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.

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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 HVAC equipment in two infrastructure projects funded through the same Housing Trust Fund (HTF) award.

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 multiple products for multiple projects funded by the same FFA award. No other projects will utilize the waiver.

Proposed Waiver Description: Project-specific nonavailability waiver of BABA requirements to the 331 Cumberland Avenue affordable housing project in Portland, Maine, and the Pettingill Pines affordable housing project in Windham, Maine, for HVAC equipment.

Project Summary: The two projects are:

1. The 331 Cumberland Avenue affordable housing project, located at 331-337 Cumberland Avenue in Portland, Maine. The project will consist of the construction of 60 units of affordable housing and a 12,000-square foot daycare center.
2. The Pettengill Pines affordable housing project, located at 18 Anglers Road in Windham, Maine. The project will consist of the construction of a 48-unit affordable senior housing development.

Length of the Waiver: From the effective date of the final waiver until June 30, 2028.

Items Covered in Waiver: The Maine State Housing Authority is seeking a waiver for HVAC equipment, as described in detail below:

- VRF System
 - Category: Manufactured Product
 - Cost: \$896,948.00
 - 331 Cumberland: \$283,948.00
 - Pettengill Pines: \$613,000.00

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- Quantity: 2 systems with 169 component parts (including indoor wall-mounted units, indoor ductless units, and outdoor heat recovery units)
 - 169 (114+55) Variable Refrigerant Flow (VRF) HVAC
- PSC: 4130 – Refrigeration and Air Conditioning Components
- NAICS: 333415 – Air-Conditioning and Warm Air Heating Equipment Manufacturing
- Country of Origin: Japan
- Technical Specifications:
 - Pettengill Pines:
 - Wall-mounted units: 6,000 BTU/H nominal cooling capacity; 6,700 BTU/H nominal heating capacity
 - Outdoor heat recovery units: 96,000 BTU/H nominal cooling capacity; 108,000 BTU/H nominal heating capacity
 - 331 Cumberland Avenue:
 - Outdoor heat recovery units: 216,000 BTU/H nominal cooling capacity; 243,000 BTU/H nominal heating capacity.
- Heat Pumps
 - Specific Product: Ephoca AIO Vertical Stack Heat Pump with Integral ERVs
 - Category: Manufactured Product
 - Cost: \$461,238.00 (331 Cumberland)
 - Quantity: 58
 - PSC: 4130 – Refrigeration and Air Conditioning Components
 - NAICS: 333415 – Air-Conditioning and Warm Air Heating Equipment Manufacturing
 - Country of Origin: Italy
 - Technical Specifications: 8,900 BTU/H cooling capacity; 8,300 BTU/H heating capacity

Description of Efforts Made to Avoid the Need for a Waiver

Both the grantee and HUD made every effort to obtain domestically produced HVAC equipment.

Between August and November 2025, the project team conducted market research to identify whether any domestically manufactured VRF or comparable systems could satisfy BABA requirements. The team contacted major HVAC suppliers and manufacturers and requested written confirmation regarding the availability of U.S.-manufactured VRF systems or alternatives capable of meeting the project's performance, capacity, and design requirements

A primary regional VRF supplier confirmed that no VRF equipment is BABA compliant, that 1:1 ductless and residential ASHP systems face the same manufacturing limitations, and that the only fully BABA-compliant equipment they carry - commercial unitary and split systems - are not suitable for these projects' design or heating-capacity needs.

The project team also contacted three major VRF manufacturers. Each manufacturer provided written confirmation that their VRF, ductless, and multi-split systems are not manufactured in the United States, that no domestic manufacturer currently produces VRF systems capable of meeting BABA's 55% domestic-content requirement, and that no compliant production capacity exists in

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the U.S. 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 products. Furthermore, the market research findings for this waiver are supported by market research HUD has conducted for similar projects. Based on that research, no BABA-compliant VRF systems or heat pumps are available.

Anticipated Impact if No Waiver is Issued

Failure to grant this waiver would likely result in the loss of a total of 88 units of affordable housing and a childcare facility. MaineHousing requires all projects to provide fully electric, high-efficiency heating and cooling systems. Project construction cannot proceed without the necessary HVAC equipment.

HUD additionally believes this waiver is justified because most items used in these projects will be compliant with BABA. This waiver is for items whose total value is three percent of the total infrastructure expenditure for 331 Cumberland Avenue and 3.5 percent of the total infrastructure expenditure for Pettengill Pines. 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: 331 Cumberland Avenue Affordable Housing Project; Pettengill Pines Affordable Housing Project

Recipient Name: Maine State Housing Authority

Unique Entity Identifier (UEI): NJEK QK2U 8ZJ5

Federal Award Identification Number (FAIN): F24SG230100

Financial Assistance Listing Name: Housing Trust Fund (HTF)

Assistance Listing Number: 14.275

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Federal Financial Assistance Funding Amount: \$1,600,000.00

- \$1,000,000.00 – 331 Cumberland Avenue
- \$600,000.00 – Pettengill Pines

Total Estimated Infrastructure Expenditures: \$41,000,000.00

- \$23,000,000.00 – 331 Cumberland Avenue
- \$600,000.00 – Pettengill Pines

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