

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 Westpark Redevelopment Project for Variable Refrigerant Flow Heat Pump Systems (HUD Waiver #W-0000077)

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 (quantity of 2 sets) 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-0000077 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 IIA, for two high capacity Variable Refrigerant Heat Pump systems in an infrastructure project funded through a combination of funding sources provided by the Office of Public and Indian Housing to the Philadelphia Housing Authority including funding from the Public Housing Capital Fund 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 (quantity of 2 sets) for a single project. No other project will utilize the waiver.

Proposed Waiver Description: Project-specific nonavailability waiver of BABA requirements to the Westpark Redevelopment project in Philadelphia for Variable Refrigerant Flow Heat Pumps.

Project Summary: The project is in Philadelphia, PA. Located at 4401 Holden Street in West Philadelphia, the Westpark Building A and Westpark Building B projects are part of the larger Westpark Redevelopment, which will transform a currently vacant 12-acre public housing campus into a vibrant mixed-income community of over 1,000 homes. The project replaces obsolete public housing with a modern, sustainable neighborhood supported by Section 8 assistance and private investment. It will create thousands of jobs, expand the local tax base, and reduce long-term federal and city operating costs, serving as a model for how federal resources can leverage private resources, catalyze economic growth, and community revitalization.

Westpark Building A is a 7-story mixed-use, mixed-income development which will deliver 145 new rental homes, 73 of which will be permanently affordable. Westpark Building B, the first component of the Redevelopment, is the adaptive reuse of an existing 20-story vacant tower into 141 homes, 76 of which will be permanently affordable. Both Westpark Buildings A and B also include the construction of a public plaza and significant sitewide infrastructure. The plaza component will include hard and landscape elements to connect the building to the adjacent SEPTA train station, providing ADA access. The street infrastructure will include construction of 40' wide streets with sidewalks and pedestrian safety infrastructure, as well as utilities within the roadway infrastructure, including storm water and sanitary systems, water lines, gas lines and electrical banks.

Length of the Waiver: From the effective date of the final waiver until completion of the project.

Items Covered in Waiver: The Philadelphia Housing Authority is seeking a waiver for Variable Refrigerant Flow Heat Pumps, as described below and in the detailed attachment:

- Variable Refrigerant Flow Heat Pumps
 - Category: Manufactured Product
 - Cost: estimated \$300,000 (\$150,000 each)
 - Quantity: 2
 - PSC: 4120
 - NAICS: 4237
 - Country of Origin: Japan
 - Technical Specifications: See attached Project Manual with detailed specifications

Description of Efforts Made to Avoid the Need for a Waiver

Both the grantee and HUD made every effort to obtain domestically produced Variable Refrigerant Flow Heat Pumps.

The grantee completed market research beginning in 2024 which consisted of outreach to 7 potential suppliers of Variable Refrigerant Flow Heat Pumps. 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 as well as attempted to contact them and did not locate any manufacturers that could provide BABA-compliant products.

Anticipated Impact if No Waiver is Issued

Failure to grant a waiver for this project would result in potential cancellation of the project because the Variable Refrigerant Flow Heat Pumps are integral to completion of the 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 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, 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

Pre-decisional DRAFT

Title of Project: Westpark Redevelopment project

Recipient Name: Philadelphia Housing Authority

Unique Entity Identifier (UEI): ERDV LL5J N8J5

Federal Award Identification Number (FAIN): Multiple including but not limited to PA01P00250125, PA01P00250126

Financial Assistance Listing Name: Multiple funding sources awarded by the HUD Office of Public and Indian Housing including the Public Housing Capital Fund

Assistance Listing Number: 14,884

Federal Financial Assistance Funding Amount: \$78.2 million

Total Estimated Infrastructure Expenditures: \$164 million