

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

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FLORIDA HOUSING FINANCE CORPORATION

BRITTANY BAY PARTNERS III, LTD.,

Petitioner,

CASE NO. 2002-0056
Application Number 2002-715H

v.

FLORIDA HOUSING FINANCE
CORPORATION,

FINAL ORDER

This cause came before the Board of Directors of the Florida Housing Finance Corporation (“Board”) for consideration and final agency action on October 10, 2002. On or before April 15, 2002, Petitioner submitted its Application to Florida Housing Finance Corporation (“Florida Housing”) to compete for an allocation of HOME rental funds. Petitioner timely filed a Petition for Formal Administrative Hearing, pursuant to Sections 120.569 and 120.57(1), Florida Statutes, (the “Petition”) challenging Florida Housing’s scoring on parts of the Application. Florida Housing reviewed the Petition pursuant to Section 120.569(c), Florida Statutes, and determined that there were no disputed issues of material fact. An informal hearing was held in this case on September 13 and September 18, 2002, in Tallahassee, Florida, before Florida Housing appointed Hearing Officer, David E. Ramba. Petitioner and Respondent timely filed Proposed Recommended Orders.

After consideration of the evidence, arguments, testimony presented at hearing, and the Proposed Recommended Orders, the Hearing Officer issued a Recommended Order. A true and correct copy of the Recommended Order is attached hereto as “Exhibit A.” The Hearing Officer

recommended Florida Housing enter a Final Order reversing the scoring of the application and awarding Petitioner the full 5.0 non-federal match source points for its HOME application.

The findings and conclusions of the Recommended Order are supported by competent substantial evidence.

In accordance with the foregoing, it is hereby **ORDERED**:

1. The findings of fact of the Recommended Order are adopted in full as Florida Housing's findings of fact and incorporated by reference as though fully set forth in this Final Order.

2. The conclusions of law of the Recommended Order are adopted in full as Florida Housing's conclusions of law and incorporated by reference as though fully set forth in this Final Order.

3. The Hearing Officer's recommendation that a Final Order be entered reversing the scoring of the application and awarding Petitioner the full 5.0 non-federal match source points for its HOME application is approved and accepted as the appropriate disposition of this case.

Accordingly, Petitioner is awarded the full 5.0 non-federal match source points for its HOME application.

DONE and ORDERED this 10th day of October, 2002.

FLORIDA HOUSING FINANCE
CORPORATION

By: _____


Chairperson

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 300 MARTIN LUTHER KING, JR., BLVD., TALLAHASSEE, FLORIDA 32399-1850, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

Copies to:

Paula C. Reeves
Authorized Representative
Florida Housing Finance Corporation
337 North Bronough Street, Suite 5000
Tallahassee, FL 32301

M. Christopher Bryant, Esq.
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STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

BRITTANY BAY PARTNERS III, LTD.,

Petitioner,

CASE NO. 2002-0056
Application Number 2002-715H

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

RECOMMENDED ORDER

On September 13, 2002 and September 18, 2002, an informal administrative hearing was held in this case in Tallahassee Florida before Florida Housing Finance Corporation's appointed Hearing Officer, David E. Ramba.

APPEARANCES

For the Petitioner:

M. Christopher Bryant
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For the Respondent:

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JOINT STIPULATED EXHIBITS

<u>EXHIBIT:</u>	<u>DESCRIPTION:</u>
1.	HOME Rental Application Instructions and Information (Section "F Match")
2.	Section 92.220 Form of Matching Contribution.
3.	Two-page Cure for \$125,000 general contractor fee; Petitioner's request for \$125,000 to be treated as a "matching contribution."
4.	Three-page Cure for \$10.2 million to be treated as a "matching contribution."
5.	2002 HOME Rental Application Summary
6.	Section 92.219 Form of Matching Contribution, for eligible forms of match.
7.	NOAD challenges of competitor applicants (eight pages).
8.	Development Cost Pro Forma reflecting addition of \$125,000 fee added as "guarantee fee."
9.	Joint Stipulation of Issues, Facts, and Exhibits.
10.	CED Holdings, XVI, Ltd., Independent Auditor's Report

PRELIMINARY STATEMENT

On or before April 15, 2002, Petitioners submitted an application to Florida Housing Finance Corporation for HOME Rental Program funds in the 2002 Universal Cycle. On July 22, 2002, Florida Housing Finance Corporation notified Petitioners of the results of the scoring of Petitioner's application and provided Petitioners with a Notice of Rights pursuant to Section 120.569 and 120.57, Fla. Stat. On August 13, 2002, Petitioners timely filed the Petitions for informal hearings. On September 18, 2002 a motion was granted to consolidate Petitioner's hearings. An informal hearing was conducted on September 13, 2002, and continued and completed on September 18, 2002. The parties have submitted timely proposed recommended orders to the Hearing Officer.

STATEMENT OF THE ISSUES

Pursuant to a joint stipulation on the issues, the two matters before the Hearing Officer are as follows:

1. The first issue is whether Florida Housing should award Petitioner 4.45 additional points for a claimed "matching contribution" pertaining to the issuance of bonds for affordable housing?
2. The second issue is whether Florida Housing should award Petitioner .4 additional points for Petitioner's claimed contribution of services from the Development's General Contractor?¹

FINDING OF FACTS

1. Florida Housing is a public corporation organized under Chapter 420, Fla. Stat., to provide and promote the public welfare by administering the governmental function of financing, and refinancing houses, and related facilities in Florida in order to provide decent, safe, and affordable housing to persons and families of low, moderate, and middle income.

2. The HOME program is a federal program that provides a funding vehicle for developers in the affordable housing market. HOME loans often provide more favorable financing terms than would be available through conventional financing sources. In exchange for HOME financing, the developers enter into agreements to set aside all, or a portion of, residential units to lower income residents.

3. On April 15, 2002, Petitioner applied in Florida Housing's 2002 HOME RENTAL Application Cycle for a HOME loan in the amount of \$6.25 million. In its

¹ Calculated as follows: $\$125,000 \div \$1,562,500 = .08 \times 5 = .4$ points

application, Petitioner seeks to construct an 80-unit multi-family housing development in Collier County, Florida. The apartment units will be set aside for low income residents.

4. The Scoring Summary provided by Florida Housing, dated May 13, 2002, stated that Petitioner did not receive maximum points. On June 26, 2002, Petitioner submitted a cure ("Cure") by providing several documents to increase Petitioner's score by 5 points. These documents pertained to HOME "match contributions." (See Exhibits "4".) One document pertained to a claimed reduction in Petitioner's general contractor fee, in the amount of \$125,000, discussed below. (See Exhibit "3").

5. The application and instructions for the application are incorporated into Florida Housing's rules (specifically, Fla. Admin. Code R. 67 *et. al.*).

6. The maximum score that can be obtained in the HOME application is 86 points. Petitioner's current score is 81.55 points.

7. There is a limited amount of funding available under the HOME program. The funding available for the 2002 cycle totaled \$21,320,100. Therefore, there is competition for the available finite funding under the HOME program.

Bonds as a "Match Contribution"

8. Because Petitioner was seeking a HOME loan of \$6.25 million, Petitioner had to demonstrate "non-federal match sources" of 25 percent of \$6.25 million to achieve 5 match points (i.e. $\$6,250,000 \times .25 = \$1,562,500$).

9. Petitioner submitted three documents in its Cure on June 26, 2002, to support Petitioner's request for 5.0 points in relation to the "match contribution" pertaining to the bonds.

10. One of the documents, relating to the bonds in question, presented by Petitioner, was a letter by Attorney Donald A. Pickworth, dated June 26, 2002, addressed to FloridaHousing Finance Corporation. The letter states as follows:

“RE: HOME Match Funds: Brittany Bay Apartments-Phase III.

“The Housing Finance Authority of Collier county (the “Authority”) has committed to or has issued multifamily housing revenue bonds totaling \$10.2 million for two affordable housing communities this year.

“It is our understanding that 50 percent of the loan amounts made from bond proceeds to multifamily affordable housing development qualify as HOME match funds under the HUD regulations.

“Based upon this understanding, we are requesting that FHFC consider the appropriate percentage of our Multifamily Housing Revenue Bonds as eligible match for the HOME loan requested for Brittany Bay Apartments, Phase III. The Authority is pleased to support this community, which we understand will be providing 80 HOME assisted units with an affordability period of 30 years, without an allocation of Region Eight Private Activity Bond Allocation or other Collier County resources.”

11a. The second document, pertaining to the bonds in question, submitted on June 26, 2002, is Petitioner’s “Brief Statement of Explanation for Cure for Application 2002-715H.” Petitioner stated, in relevant part, as follows:

“Collier County’s commitment to or issuance of \$10,200,000 in Multi-Family Housing Revenue Bonds will result in \$5,100,000 in eligible HOME match. This match created by other affordable housing communities is being made available to Brittany Bay apartments-Phase III by the Housing Finance Authority of Collier County.” Exhibit “4.”

11b. The third document, provided by Petitioner as part of the Cure relating to the bonds in question, is entitled “Explanation of Tax-Exempt Bond Match,” and states as follows:

“Pursuant to the HOME regulations, tax-exempt bond financing may be utilized to provide HOME match equal up to 50% of the amount of tax-exempt financing. Attached thereto is Collier County’s commitment to provide up to 50% of the tax-

exempt financing issued or committed to on behalf of other multi-family projects in 2002 to Brittany Bay Apartments-Phase III for purposes of a HOME match. As the match needs are only \$1,562,500 (\$6,250,000 HOME Loan request x 25%), the applicant will only use \$1,562,500 of Collier County's match of up to \$5,100,000 (\$10,200,000 x 50%)." See Exhibit "4."

General Contractor Contribution as a "Match Contribution"

12. Brittany Bay Partners III. Ltd., is a Florida limited partnership.
13. CED Construction Partners, Ltd, is a Florida limited partnership.
14. CED Construction Partners, Ltd, has allegedly agreed to reduce its general contractor's fee for Petitioner by \$125,000.
15. 24 CFR 92.220 et. al. provides guidance on the claimed "match contribution" in relation to the general contractor contribution.

CONCLUSION OF LAW

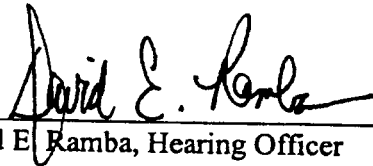
1. Pursuant to §120.569 and §120.57(2), Florida Statutes and Florida Administrative Code Rule 67-47, the Hearing Officer has jurisdiction over the parties to this proceeding.
2. As to the first issue, Petitioner properly documented well in excess of \$1,562,500 in non-federal match funds issued by the Collier County Housing Finance Authority for affordable housing.
3. As to the second issue, Petitioner adequately provided documentation of valid non-federal match sources of \$125,000 for the general contractor's reduction in fees in compliance with HUD and Florida Housing Finance Corporation's rules and regulations.

RECOMMENDED:

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby
RECOMMENDED:

That Florida Housing Finance Corporation issue a final order reversing the scoring of the application and awarding Petitioner the full 5.0 non-federal match source points for its HOME application.

DATED this 23th day of September, 2002.



David E. Ramba, Hearing Officer

Copies Furnished:

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