

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

SPRING HARBOR, LTD,

Petitioner,

CASE NO.: 2010-038BP

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

FORMAL WRITTEN PROTEST AND PETITION FOR ADMINISTRATIVE HEARING

Spring Harbor, Ltd. (“Spring Harbor” or the “Petitioner”) hereby files this formal written protest challenging certain terms and specifications in Request for Proposals 2010-16 released on November 19, 2010, by Respondent, Florida Housing Finance Corporation, and in support of this Petition, Spring Harbor states as follows:

1. This is a formal written protest filed pursuant to Sections 120.57(1) and 120.57(3), Florida Statutes,¹ and Rule 28-110.004, Florida Administrative Code. The Division of Administrative Hearings has jurisdiction over the subject matter and parties to this proceeding. See, Sections 120.569, 120.57(1), 120.57(3), Fla. Stat.

Parties

2. Spring Harbor is a Florida Limited Partnership whose address is 1275 Lake Heathrow Lane, Suite 115, Heathrow, Florida 32746. For purposes of this proceeding, the Petitioner’s address is that of its undersigned counsel.

3. Petitioner is the owner of a 248-unit affordable housing development located Lake County. Petitioner’s General Partner is a “Developer” as defined by Florida Housing in

¹ All citations contained herein are to the official version of the 2010 Florida Statutes unless otherwise noted.

Rule 67-48.002(29), Fla. Admin Code. Petitioner's General Partner and its affiliated entities have successfully completed the construction of several affordable housing developments from funds distributed by Florida Housing Finance Corporation.

4. The affected agency is the Florida Housing Finance Corporation ("Florida Housing" or "Respondent"). Florida Housing's address is 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329.

5. Florida Housing is a public corporation created by Section 420.504, Florida Statutes, to administer the governmental function of financing or refinancing affordable housing and related facilities in Florida. Florida Housing's statutory authority and mandates appear in Part V of Chapter 420, Florida Statutes. See, Sections 420.501-420.55, Florida Statutes.

The RFP

6. On November 19, 2010, Florida Housing issued Request for Proposals 2010-16 (the "RFP")² entitled "Extremely Low Income (ELI) Households." The RFP solicited sealed proposals from qualified applicants who had previously constructed affordable housing units utilizing funding awarded from Florida Housing. As discussed below, through the RFP Florida Housing is proposing to provide additional funding to qualified applicants to convert existing affordable housing units set aside for households earning 60% of area median income ("AMI") down to a lower set-aside level targeted at extremely low income ("ELI") households.

7. Petitioner received notice of the RFP through e-mail notification on November 19, 2010.

8. On November 22, 2010, Florida Housing issued a modification to the RFP which changed portions of paragraph B.2 in Section 4 of the RFP.

² A true and correct copy of the RFP, which includes Questions and Answers explaining provisions in the RFP and the two Addenda discussed in paragraphs 8 and 9, is attached hereto as Exhibit A.

9. On November 24, 2010, Florida Housing issued a second modification to the RFP which modified Section 7 of the RFP, which sets forth the scoring that would be utilized in evaluating the eligible proposals.

10. On November 30, 2010, Spring Harbor timely submitted its Notice of Intent to protest the terms of the RFP.³ This Formal Written Protest and Petition for Administrative Hearing is timely filed in accordance with the provisions of Section 120.57(3)(b), Florida Statutes, and Rule 28-110.004, Florida Administrative Code.

11. The RFP required applicants to submit proposals to Florida Housing by no later than 2:00 p.m. on December 3, 2010. By Notice dated November 30, 2010,⁴ Florida Housing alerted potential applicants that the filing of the notice of intent to protest by Spring Harbor did not change or stay the due date for submitting a response to the RFP. Spring Harbor timely submitted a response to the RFP confirming its intent to seek financing for its affordable housing project by applying for funding from the sources that are proposed to be allocated through the RFP.

12. As the owner of a development seeking funding from the sources being allocated through the RFP, Spring Harbor is substantially affected by the terms of the RFP and, consequently, has standing to initiate and participate in this proceeding. The results of this proceeding may affect the amount of funding that Spring Harbor can receive through the RFP.

Background on Florida Housing's Programs

13. Florida Housing administers several programs aimed at assisting developers in building affordable housing in the state in an effort to protect financially marginalized citizens from excessive housing costs.

³ A true and correct copy of the Petitioner's Notice of Intent to Protest is attached hereto as Exhibit B.

⁴ A true and correct copy of the Notice is attached hereto as Exhibit C.

14. The programs through which Florida Housing allocates resources to fund affordable housing include: a federally funded multi-family mortgage revenue bond program (“MMRB”) established under Section 420.509, *et. seq.*, Fla. Stat.;⁵ the State Apartment Incentive Loan Program (“SAIL”) created pursuant to Section 420.5087, *et. seq.*, Fla. Stat.;⁶ and the State Housing Tax Credit Program (the “Tax Credit Program”) established in Florida under the authority of Section 420.5093, Fla. Stat. These funding sources are allocated by Florida Housing to finance the construction or substantial rehabilitation of affordable housing.⁷ A portion of the units constructed based upon funding from these programs must be set aside for residents earning at or below a specified percentage of area median income (“AMI”). Historically, most of the housing units constructed based on funding from Florida Housing have been targeted to tenants earning 60% of AMI.

Spring Harbor

15. Spring Harbor was awarded funding from the Multi-Family Mortgage Revenue Bond Program in 1999 and also received a Tax Credit allocation in 2000 to finance the construction of its 248-unit development in Lake County. The bonds issued to finance construction of Spring Harbor were credit enhanced through Florida Housing’s Guarantee Fund Program. The Guarantee Fund Program was created in 1992 under the authority granted in Section 420.5092, Florida Statutes. Through the Guarantee Fund Program, Florida Housing agrees to satisfy the mortgage debt for an affordable housing development if the development is

⁵ Each year, Florida Housing receives a portion of the state’s tax exempt bond allocation, some of which it issues to finance the construction of affordable multi-family rental housing. The tax exempt bond proceeds are loaned to developers to finance the construction of a development. The cash flow generated from rental income pays back those bonds over time.

⁶ SAIL Funds are primarily available through a portion of documentary stamp tax revenues collected on real estate transactions in Florida.

⁷ Since 2002, Florida Housing has allocated funding from the Multi-Family Bond, SAIL and Tax Credit Programs through a single annual competitive application process known as the “Universal Cycle.” Applicants in the Universal Cycle compete for funding from the programs administered by Florida Housing.

unable to generate sufficient revenue to service the debt. The purpose of providing a guarantee or assist in credit enhancement through the Guarantee Fund Program, is to lower the cost of credit for developers and to potentially increase the availability of mortgage bonds to facilitate the construction of affordable housing.

16. Florida Housing has not approved any additional Guarantee Fund participation for affordable housing developments since 2005. By the fall of 2008, significant changes were taking place in the economy and the housing market in particular. Many of the projects that had been awarded funding through the Florida Housing allocation process were encountering difficulties. Because of an increased number of claims and a growing risk of default associated with Guarantee Fund developments unable to meet debt service due to declining economic conditions, Florida Housing has been seeking ways to depopulate or reduce the exposure of the Guarantee Fund Program.

17. The RFP has been developed by Florida Housing as a method for allocating funding to existing affordable housing developments that have been encountering financial difficulties due to the decline in economic conditions. In the RFP, Florida Housing has designated funding from the SAIL Program and from the supplemental loan program to allocate to developers in order to pay off mortgages guaranteed by the Guarantee Fund and to assist affordable housing developments that have encountered difficulties due to the change in economic conditions..

18. The RFP indicates that Florida Housing has set aside approximately \$51,800,000 in ELI and SAIL funding for loans to be made to eligible projects that submit applications in response to the RFP. The funds to be allocated through the RFP (hereinafter the

“SAIL Funds”) are to be used to facilitate the refinancing of the developments selected for funding.

19. The Introduction Section of the RFP provides a general description of the type of projects that will be considered eligible for this funding. See, Exhibit A, page 2. Eligible developments are those that have a mortgage note guaranteed by the Florida Housing Guarantee Program or developments that received an award of funding from Florida Housing prior to 1996.

20. Section 6B. of the RFP classifies eligible proposals into four different priority categories.⁸

21. Section 4B.2 of the RFP sets forth limits on the number of units that will be eligible to be converted to the ELI set aside and thus entitled to an award of SAIL Funds. As discussed below, these limits are arbitrarily based on physical occupancy averages which fail to take into account market conditions and economic adjustments made by the management of the development. In addition, the limits are based upon inaccurate, incomplete and/or inconsistent debt service requirements and/or coverage ratios.

Problems With The RFP

22. As reflected on Exhibit A to the RFP, Florida Housing has effectively predetermined the eligibility and awards for the SAIL Funds. The method for determining the number of units eligible for funding in the RFP was structured around the projects that were anticipated to submit proposals for funding under the RFP. In other words, the potential applicants for the RFP were known and the methodology effectively decided in advance how many units for each project would be able to obtain funding.

⁸ Spring Harbor is in Priority Grouping 1 because its mortgage note was guaranteed by the Guarantee Program and it is not a HUD risk-sharing transaction.

23. The RFP effectively limits the funding for eligible applicants in a manner that is arbitrary and capricious and contrary to competition. Based upon the information available to date, it appears that inaccurate, incomplete or inconsistent information was utilized in determining the debt service and NOIs for the developments delineated on Exhibit A to the RFP. As a result, the method for determining the number of units that would be eligible for funding under the RFP is flawed, based on inaccurate and incomplete information and based on erroneous or faulty assumptions or conclusions.

24. If the RFP is allowed to proceed in its current form, Spring Harbor would effectively be limited in the funding it could receive and precluded from competing with similarly situated developers of affordable housing for an award of SAIL Funds.

25. The RFP established a limit on funding for Priority 1 projects based on “physical” occupancy. See, Exhibit A, November 22, 2010 Modification to paragraph B.2a. The use of physical occupancy to determine the number of units eligible for conversion is contrary to competition. Many projects that are suffering as a result of the economic downturn have taken steps to deal with the changed economic conditions by lowering their rents below the 60% AMI level. This reduction has enabled them to achieve higher occupancy rates than developments that are poorly managed and/or that have failed to lower rents. However, because of the reduced rents, these developments are incurring large losses. If occupancy rates are to be used, economic occupancy rather than physical occupancy should be used to establish the limit on the number of units that will be funded for conversion through the RFP.

26. Applications for projects that have voluntarily reduced rents to address deteriorating economic conditions are not given equal opportunity to obtain funding as compared

to those developments that have refused to reduce rents below the 60% AMI level. This approach unjustifiably rewards projects for failing to respond to changed market conditions.

27. Not only does the physical occupancy criteria fail to take into account steps that some developers, such as Spring Harbor, have taken to deal with the economic decline, physical occupancy rates can be the result of numerous extraneous and irrelevant factors that do not warrant or justify an allocation of SAIL funds. Moreover, physical occupancy fails to take into account unique factors that could skew vacancy rates in an area such as the number of projects in a particular location, and/or poor management which should not be rewarded with additional funding.

28. The RFP's reliance on physical occupancy standard to determine or limit the number of units eligible for funding is an artificial barrier that artificially restricts eligible applicants and precludes an evaluation of the actual market conditions in the area.

29. The purpose of a competitive bidding process is in part to ensure that public entities do not arbitrarily or capriciously discriminate between bidders or make an award of a public contract or expend public funds on the basis of personal preference. See, Engineering Contractors Ass'n of S. Fla., Inc. v. Broward County, 789 So. 2d 445, 450 (Fla. 4th DCA 2001). The RFP effectively determines in advance which of similarly situated applicants will be eligible for the SAIL Funds to be allocated. By using incomplete, inaccurate or inconsistent information to limit in advance the number of potential units that Spring Harbor can compete to obtain an allocation from the RFP, Florida Housing is acting contrary to competition and contrary to the goals of a competitive bidding process.

30. The process established by Florida Housing in the RFP fails to include any mechanisms to guard against favoritism or impropriety in deciding which projects will be

allocated funding. The allocation of public funds should not be predicated on the ill-conceived approach set forth in the RFP.

31. The RFP establishes a review committee of Florida Housing employees to consider the responses to the RFP and to make funding recommendations.

32. Section 7 of the RFP sets forth the evaluation process and provides that the review committee will:

Select Applicants most likely to be considered for award, make any adjustments deemed necessary to best serve the interests of Florida Housing's mission, and develop a recommendation or services of recommendations to the Board. The Committee will then rank the Proposals deemed eligible for funding in order of the SAIL ELI loan funding Priorities, and preferences as outlined in Section 6B above, applying the lottery tie-breaker as needed. The Committee shall also use the various scored items as part of its evaluation and recommendation process. The Committee may make a recommendation, in addition to providing the ranking information and the information from the non-scored items to the Board for the Board to use in making the final selection. The Committee may also give the Board a written and/or verbal notice describing the reasons for any recommendation. The Board may use the Proposals, the Committee's scoring and any other information or recommendation provided by the Committee or staff, and any other information the Board deems relevant with selection of Applicants to whom to award funding.

33. Section 7 of the RFP vests unbridled discretion in Florida Housing to make funding decisions based on undisclosed and potentially inconsistent criteria.

34. This provision is vague, arbitrary and capricious, contrary to competition and fails to establish adequate guidelines for ensuring that the public funds being allocated are spent in the best interest of the state.

35. Spring Harbor is entitled to a formal administrative hearing pursuant to Sections 120.57(1) and 120.57(3), Florida Statutes, to resolve these issues. See, Fairbanks, Inc. v. State, Dep't of Transp., 635 So. 2d 58 (Fla. 1st DCA 1994).

Disputed Issues of Material Fact and Law

36. Disputed issues of material fact and law exist and entitle Spring Harbor to a formal administrative hearing pursuant to Section 120.57(1), Florida Statutes. The disputed issues of material fact and law include, but are not limited to, the following:

a. Whether any legal authority exists to support the attempt to limit funding for projects based on physical occupancy;

b. Whether the provisions of the RFP limiting Spring Harbor's eligibility for an award of SAIL funds have been properly adopted and/or are based on erroneous assumptions and conclusions;

c. Whether the occupancy and debt service ratios used as criteria to limit the number of units that will be funded for conversion have been properly determined and adopted and/or whether they are arbitrary or capricious and/or contrary to competition;

d. Whether the proposed process for allocating SAIL funds is arbitrary or capricious or is contrary to competition;

e. Whether limiting projects such as Spring Harbor to funding to convert only 5% of its units through an allocation of SAIL funds is in the best interests of the State of Florida, is arbitrary or capricious and/or contrary to competition;

f. Whether the RFP criteria and procedures are contrary to prior Florida Housing interpretations of the applicable statutes and administrative rules and/or the prior approach for determining debt service and the calculation of debt service ratios;

g. Whether the RFP contains appropriate and sufficient criteria for comparison or evaluation of proposals;

h. Whether the RFP improperly predetermines the eligibility of potential applicants for funding;

- i. Whether the RFP adequately discloses the bases or grounds upon which SAIL Funds will be allocated;
- j. Whether the RFP improperly favors certain developers or projects and/or artificially limits the funding eligibility of potential applicants;
- k. Whether the RFP funding criteria are consistent with fair and open competition for the allocation of SAIL Funds;
- l. Whether the RFP is predicated on sufficient information to predetermine the validity of the Spring Harbor project and/or to limit its eligibility for an award of SAIL Funds;
- m. Whether the RFP is arbitrary, capricious, contrary to competition and/or contrary to Florida Housing's governing statutes or rules;
- n. Whether the RFP improperly incorporates new policies and interpretations that impermissibly deviate from existing rules and/or other prior agency interpretations and precedents;
- o. Such other issues as may be revealed during discovery and the deposition process.

Statutes and Rules Entitling Relief

37. The statutes and rules which are applicable in this case and that require modification of the RFP specifications include, but are not limited to, Sections 120.57(3) and Chapter 420, Part V, Florida Statutes, and Rules 67-48.002, 67-21.002, 67-48.0072, 67-48.004 and 67-48.005, Florida. Administrative Code.

Concise Statement of Ultimate Fact and Law, Including the Specific Facts Warranting Reversal of Agency's Intended Action

38. The RFP should be withdrawn or modified because it is contrary to competition, inconsistent with prior interpretations of the governing statutes, the existing rules, and previously enunciated policies. See Section 120.57(3)(f), Fla. Stat.

39. By basing funding determinations on physical occupancy, the RFP is contrary to competition. In addition, the RFP improperly limits the eligibility for funding based on inaccurate, incomplete and inconsistent information. The debt service calculations on Exhibit A to the RFP are inconsistent with and/or contrary to the prior interpretation and calculations of debt service by Florida Housing.

40. Under the RFP, applications for projects that have voluntarily reduced rents to address deteriorating economic conditions are not given equal opportunity to obtain funding as compared to those developments that have refused to reduce rents below the 60% AMI level. This approach unjustifiably rewards projects for failing to respond to changed market conditions.

41. Spring Harbor seeks to participate in the RFP process in order to compete for an award of SAIL Funds with other developers who have projects that are part of the Guarantee Fund Program. Even with a higher physical occupancy, Spring Harbor has suffered financially as much or more than many of the competing projects with lower occupancy that have not lowered their rents. Those developments will be unjustifiably favored for funding under the RFP as currently written.

42. The basis and assumptions upon which the final funding determinations will be made are not set forth in the RFP and Spring Harbor has not had an opportunity to respond or rebut the assumptions that are used to develop the recommendations which could effectively limit or preclude Spring Harbor from obtaining an award of funds.

43. By artificially limiting the number of units that will qualify for funding, the RFP is arbitrary and capricious, contrary to competition, not in the best interests of the State, and in violation of the governing statutes and administrative rules. The challenged RFP specifications are not based on fair and open competition and there has been no detailed or reasoned justification for the upfront limitation of Spring Harbor's project to funding for only 5% of its units.

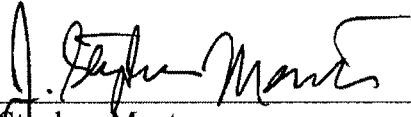
WHEREFORE, pursuant to Section 120.57(3), Florida Statutes, and Rule 28-110.004, Florida Administrative Code, Spring Harbor requests the following relief:

a) That it be provided an opportunity to resolve this protest by mutual agreement within seven days of the filing of this Petition as provided by Section 120.57(3)(d)1., Florida Statutes.

b) That if this protest cannot be resolved within seven days, that the matter be referred to the Division of Administrative Hearings for a formal hearing to be conducted before an Administrative Law Judge pursuant to Sections 120.57(1) and (3), Florida Statutes.

c) That Recommended and Final Orders be entered that either cancel the RFP or modify the provisions that effectively limit Spring Harbor from obtaining an allocation of SAIL Funds.

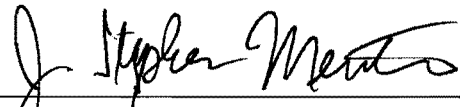
RESPECTFULLY SUBMITTED this 10th day of December, 2010.



J. Stephen Menton
Fla. Bar No. 331181
Michael J. Barry
Fla. Bar No. 646911
Rutledge, Ecenia & Purnell, P.A.
119 South Monroe Street, Suite 202
Tallahassee, Florida 32301
(850) 681-6788
(850) 681-6515 (facsimile)
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this original has been hand delivered to the Agency Clerk, Florida Housing Finance Corporation, and a copy to Wellington Meffert, General Counsel, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000 Tallahassee, Florida 32301; this 10th day of December, 2010.



Attorney

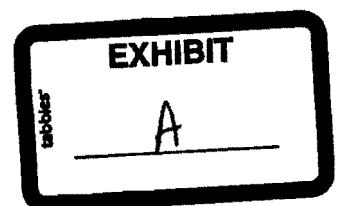
REQUEST FOR PROPOSALS 2010-16

RFP 2010-16 FOR EXTREMELY LOW INCOME (ELI) HOUSEHOLDS

for

FLORIDA HOUSING FINANCE CORPORATION

November 19, 2010



**SECTION ONE
INTRODUCTION**

This Request for Proposal is open to the following Applicants who commit to provide additional ELI Set-Aside units:

1. The Applicant's development has a mortgage note guaranteed by the Florida Affordable Housing Guarantee Program; or
2. The Applicant's development received an award of funding from Florida Housing prior to 1996 as evidenced by an existing recorded Florida Housing EUA or LURA that has not previously committed to set aside units for ELI Households.

Florida Housing is soliciting sealed proposals from qualified Applicants that commit to set aside additional units for ELI Households by converting units equal to or greater than 60 percent Area Median Income (AMI) committed to in their LURA or EUA down to the ELI AMI level so that the total ELI set-aside is less than or equal to 20 percent of the total units in the proposed Development in accordance with the terms and conditions of this RFP, applicable laws, rules, and regulations, and Florida Housing's generally applicable construction and financial standards.

Florida Housing anticipates that approximately \$51,800,000 in ELI and State Apartment Incentive Loan (SAIL) funding will be available as loans under this RFP.

**SECTION TWO
DEFINITIONS**

For purposes of this document, the following terms shall be defined as set out below. Unless otherwise defined below, the definitions included in Rule 67-48.002, F.A.C., Rule 67-21.002, or applicable federal regulations apply.

“Applicant”	Any person or legally formed entity that is eligible to seek SAIL funding from Florida Housing by responding to this request for proposal.
“Committee”	The review committee composed only of employees of Florida Housing that is established pursuant to Rule 67-49.007, F.A.C.
“Days”	Calendar days, unless otherwise specified. For computing any period of time allowed under this RFP, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed

	shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday or legal holiday.
“EUA” or Extended Use Agreement	An agreement which sets forth the set-aside requirements and other Development requirements under a Florida Housing program.
“Extended Use Period”	With respect to any building that is included in a Development funded through the Low Income Housing Tax Credit Program, the period that begins on the first day of the Compliance Period in which such building is part of the Development and ends on the later of: (i) the date specified by Florida Housing in the EUA or (ii) the date that is the fifteenth anniversary of the last day of the Compliance Period, unless earlier terminated as provided in Section 42(h)(6) of the IRC.
“Florida Housing”	Florida Housing Finance Corporation, a public corporation and public body corporate and politic created by Section 420.504, Fla. Stat.
“Guarantee Program”	The Florida Affordable Housing Guarantee Program created by Section 420.5092, Fla. Stat.
“Interested Party”	A person or entity that requests a copy of this Request for Proposals from Florida Housing.
“LURA” or “Land Use Restriction Agreement”	An agreement among Florida Housing, the Bond Trustee and the Applicant which sets forth certain set-aside and other Development requirements.
“MMRB Documents”	The Multifamily Mortgage Revenue Bonds (MMRB) Loan Commitment, MMRB Loan Agreement, Note, Mortgage, Credit Enhancement, MMRB Land Use Restriction Agreement, Trust Indenture, Preliminary and Final Official Statements, Intercreditor Agreement, Assignments, Bond Purchase Agreement, Compliance Monitoring Agreement, Mortgage Servicing Agreement and such other ordinary and customary documents necessary to issue and secure repayment of the Bonds and Mortgage sufficient to protect the interests of the Bond owners and Florida Housing.
“Original Application”	The Application, including any changes approved by the Board, for which the Applicant received a mortgage note guarantee from the Florida Affordable Housing Guarantee Program.

“Proposal”	A written submission by an Applicant that responds to this Request for Proposals.
“Proposed Development”	The Development proposed within the Applicant’s Original Application and this RFP.
“RFP”	This Request for Proposals, including all exhibits referenced in this document and all other documents incorporated by reference.
“SAIL” or “SAIL Program”	The State Apartment Incentive Loan Program created pursuant to Sections 420.507(22) and 420.5087, F.S.
“Threshold Item”	A mandatory requirement of the RFP.
“Website”	The Florida Housing Finance Corporation website, the home address of which is www.floridahousing.org .

**SECTION THREE
PROCEDURES AND PROVISIONS**

A. An Applicant must submit one (1) original and four (4) copies of the Proposal in a sealed envelope marked “RFP 2010-16”. Each envelope or package containing Proposals must clearly state the name of the Applicant. The Proposal that is the original must clearly indicate “Original” on that Proposal. Florida Housing shall not accept a faxed or e-mailed Proposal. Florida Housing must receive any Proposal on or before 2:00 p.m., Eastern Time, on December 3, 2010. Proposals shall be opened at that time and consecutively numbered. A lottery number will then be assigned to each Proposal by having Florida Housing’s internal auditors run the total number of Proposals through a random number generator program. Proposals must be addressed to:

Sherry Green
Contracts Administrator
Florida Housing Finance Corporation
227 N. Bronough Street, Suite 5000
Tallahassee, FL 32301-1329

B. This RFP does not commit Florida Housing to award any funding to any Applicant or to pay any costs incurred in the preparation or mailing of a Proposal.

C. Florida Housing reserves the right to:

1. Waive minor deficiencies and informalities;
2. Accept or reject any or all Proposals received as a result of this RFP;

3. Obtain information concerning any or all Applicants from any source;
4. To select for award Proposals based on evaluation standards described in this RFP.

D. Any Interested Party may submit any inquiry regarding this RFP in writing via fax 850-414-6548 , e-mail sherry.green@floridahousing.org, or mail to Sherry Green at the address given in Section Three, paragraph A. All inquiries are due by 5:00 p.m., Eastern Time, on November 29, 2010. Phone calls will not be accepted. Florida Housing expects to respond to all inquiries by 5:00 p.m., Eastern Time, on November 30, 2010. Florida Housing will post a copy of all inquiries received, and the answers, on Florida Housing's Website at:

http://apps.floridahousing.org/StandAlone/FHFC_ECM/AppPage_LegalRFPs.aspx . Florida Housing will also send a copy of those inquiries and answers in writing to any Interested Party that requests a copy. Florida Housing will determine the method of sending its answers, which may include regular United States mail, overnight delivery, fax, e-mail, or any combination of the above. Only written responses from Sherry Green, or her designee, to inquiries raised by Interested Parties that are posted on Florida Housing's Website or sent to Interested Parties shall bind Florida Housing. No other means of communication, whether oral or written, shall be construed as an official response or statement from Florida Housing.

E. Any person who wishes to protest the specifications of this RFP must file a protest in compliance with Section 120.57(3), Fla. Stat., and Rule Chapter 28-110, F.A.C. Failure to file a protest within the time prescribed in Section 120.57(3), Fla. Stat., shall constitute a waiver of proceedings under Chapter 120, Fla. Stat.

F. Florida Housing expects to select one or more Applicants to award the funding contemplated by this RFP. Any such Applicants will be selected through Florida Housing's review of each Proposal, considering the factors identified in this RFP.

SECTION FOUR OBJECTIVES AND SCOPE OF SERVICES

By submitting this Proposal, each Applicant agrees to the following terms and conditions.

A. The Applicant affirms that the information and commitments made by the Applicant in its Original Application are still in effect, subject to Rule Chapter 67-39, F.A.C., effective January 8, 2002.

B. Funding Eligibility:

1. This Request for Proposal is open to any Applicant (1) whose development has a mortgage note guaranteed by the Florida Affordable Housing Guarantee Program, or (2) has received an award of funding from Florida Housing prior to 1996 as evidenced by an existing recorded Florida Housing EUA or LURA that has not previously committed to set aside units for ELI Households.

2. Applicants must commit to set aside units for ELI Households by converting units equal to or greater than 60 percent AMI households committed to in their existing EUA or MMRB LURA down to the ELI AMI level ("New ELI Units"), so that the ELI set-aside is equal to or less than:
 - a. 5 percent of the total units in a Development whose average occupancy from June 2010 through September 2010 based upon Program Reports submitted pursuant to the requirements of Rule Chapter 67-53, F.A.C. was equal to or greater than 92%, with debt service coverage ratios greater than 0.35, but less than or equal to 0.80, as calculated by Florida Housing based upon the December 31, 2009 audited financial statements for the Applicant's development; and
 - b. 10 percent of the total units in a Development consisting of 300 units or less whose average occupancy from June 2010 through September 2010 based upon Program Reports submitted pursuant to the requirements of Rule Chapter 67-53, F.A.C. was less than 92%, with debt service coverage ratios equal to or greater than 0.50, but less than or equal to 0.80, as calculated by Florida Housing based upon the December 31, 2009 audited financial statements for the Applicant's development; and
 - c. the lesser of 65 New ELI units or 20 percent of the total units in a Development consisting of 300 units or less whose average occupancy from June 2010 through September 2010 based upon Program Reports submitted pursuant to the requirements of Rule Chapter 67-53, F.A.C. was less than 92%, with debt service coverage ratios greater than 0.35, but less than 0.50, as calculated by Florida Housing based upon the December 31, 2009 audited financial statements for the Applicant's development; and
 - d. the lesser of 65 New ELI units or 20 percent of the total units in a Development consisting of more than 300 units whose average occupancy from June 2010 through September 2010 based upon Program Reports submitted pursuant to the requirements of Rule Chapter 67-53, F.A.C. was less than 92%, with debt service coverage ratios equal to or greater than 0.50, but less than or equal to 0.80, as calculated by Florida Housing based upon the December 31, 2009 audited financial statements for the Applicant's development.
3. The maximum amount of SAIL ELI funds available to a Proposal shall be limited to \$75,000 per New ELI Unit converted from a unit equal to or greater than 60 percent AMI.
4. Applicants must commit to register all of the Developments within the Applicant's portfolio on the Florida Housing Locator at

www.floridahousingsearch.org and agree to list all of the Developments within the Applicant's portfolio with the Florida Housing Locator service on a continuing basis for the remainder of the applicable extended use period(s).

SECTION FIVE CERTIFICATION

By inclusion and execution of Exhibit B each Applicant certifies that:

A. Any material submitted in response to this RFP is a public record pursuant to Chapter 119, Fla. Stat., and subject to examination upon request, after Florida Housing provides a notice of decision pursuant to Section 120.57(3), Fla. Stat., or within 10 Days after the Proposal is opened, whichever is earlier.

B. Noninterference. At no time during the review and evaluation process, commencing with filing the Proposal and continuing until the Board renders a final decision on the RFP, may Applicants or their representatives contact Board members or Florida Housing staff concerning their own or any other Applicant's response to the RFP. If an Applicant or its representative does contact a Board or staff member in violation of this section, the Board shall, upon a determination that such contact was made in an attempt to influence the selection process, disqualify the Proposal.

C. Proposed Developments funded with SAIL ELI will be subject to the credit underwriting and SAIL Program requirements of Rule Chapter 67-48, F.A.C. and the Compliance requirements of Rule Chapter 67-53, F.A.C.

1. Credit Underwriting Review and Terms and Conditions of the SAIL ELI Grant
 - a. Upon Board approval of the selected Proposals, Florida Housing will issue an invitation to credit underwriting. If funds become available due to a withdrawn Proposal or negative credit underwriting determination, additional Proposals on the ranked list will be invited to enter credit underwriting. The ELI commitment of the last Proposal funded under this RFP may be adjusted if there is not enough SAIL ELI funding available to fully fund the New ELI Units.
 - b. Any credit underwriting report must reflect the SAIL ELI amount and all set-aside commitments.
 - c. The maximum number of New ELI set-aside units and award of SAIL ELI funds under this RFP shall not exceed the limits described in Section Four.

- d. SAIL ELI loans shall be non-amortizing at 0 percent simple interest per annum over the life of the loan, with the principal forgivable provided the units for which the SAIL ELI loan amount is awarded are targeted to ELI Households for at least 15 years.
- e. At the conclusion of the 15 year New ELI Units commitment, the New ELI Units will revert back to the original AMI restriction contained in the Applicant's original EUA and/or LURA commitment prior to this RFP, including any changes approved by the Board, and will remain in effect throughout the entire affordability period.
- f. During the credit underwriting process, the Applicant awarded SAIL ELI loan funds under this RFP must demonstrate that the New ELI Units are acceptable to the Housing Credit Syndicator and any requirements in the MMRB Documents, including acquiring Cash Flow Certificates at the Applicant's expense, if applicable. .

**SECTION SIX
INFORMATION TO BE PROVIDED IN PROPOSAL**

The Applicant must provide a completed and executed Exhibit B to RFP 2010-16, which includes the following information:

- A. Exhibit B Items:
 - 1. Name of Development (Threshold Item).
 - 2. Application Number of the Original Application (Threshold Item).

If the information stated by the Applicant at Question No. 1 on Exhibit B is inconsistent with the information stated by the Applicant at Question No. 2 on Exhibit B, Florida Housing reserves the right to verify the information during the scoring of this RFP.

- 3. Detailed description of development's ability to refinance the development, effectively removing it from the Guarantee Program. Description should include, but is not limited to, projected source of new financing, projected occupancy levels with New ELI Units, loan to value, debt service coverage ratio, gap financing sources and realistic timeline for refinancing.

By submitting a Proposal, the Applicant acknowledges that funds received under this RFP will first be used to reduce the unpaid principal balance of

the first mortgage note guaranteed by the Florida Affordable Housing Guarantee Program, and then, if applicable, the Subordinate Mortgage Initiative funding.

B. Ranking Preferences

The eligible Proposals will be classified in Priority 1, Priority 2, Priority 3, or Priority 4. For purposes of this classification, eligible Proposal means a Proposal that satisfied all threshold requirements, regardless of the Proposal's total score and request amount. Priority classifications shall be as follows:

Priority 1 will consist of Proposals whose mortgage note was guaranteed by the Guarantee Program during or prior to 2001, is not a HUD risk-sharing transaction, and whose debt service coverage ratios were greater than 0.35, but less than or equal to 0.80, as calculated by Florida Housing based upon the December 31, 2009 audited financial statements for the Applicant's development and as identified on Exhibit A.

Priority 2 will consist of Proposals whose mortgage note was guaranteed by the Guarantee Program during or prior to 2001, is a HUD risk-sharing transaction, is not included in Priority 1, and whose debt service coverage ratios were greater than 0.35, but less than or equal to 0.80, as calculated by Florida Housing based upon the December 31, 2009 audited financial statements for the Applicant's development and as identified on Exhibit A.

Priority 3 will consist of Proposals whose mortgage note was guaranteed by the Guarantee Program with debt service coverage ratios greater than 0.35, but less than or equal to 0.80, as calculated by Florida Housing based upon the December 31, 2009 audited financial statements for the Applicant's development and are not included in Priority 1 or Priority 2 and as identified on Exhibit A.

Priority 4 will consist of Proposals whose mortgage note was not guaranteed by the Guarantee Program and received an award of funding from Florida Housing prior to 1996 as evidenced by an existing recorded Florida Housing EUA or LURA that has not previously committed to set aside units for ELI Households.

The Proposals will be listed in descending order within each Priority beginning with the Proposal with the highest debt service coverage ratio as calculated by Florida Housing based upon the December 31, 2009 audited financial statements for the Applicant's development. The maximum number of set-aside units for each Proposal will be computed as described in Section Four above. Scores will be considered as part of the Committee's evaluation and recommendation process prior to the lottery tie-breaker. Results that are not a whole number will be rounded up to the next whole number. Proposals requesting SAIL ELI set-aside units below the maximum number described in Section Four above will receive preference over Proposals requesting the maximum number of SAIL ELI set-aside units within each Priority.

- a. In the event that two (2) or more Proposals requesting the same amount of SAIL ELI set-aside units, preference will be given to the Proposal with the lowest lottery number.

**SECTION SEVEN
EVALUATION PROCESS**

Individual Committee members shall evaluate the Proposals independently. The individual Committee members shall score and evaluate the Proposals by reviewing the answers to determine if Threshold is met and based on criteria described in this RFP.

Priority 1, 2 and 3 Eligible Proposals that meet Threshold will be scored on the development’s ability to refinance the development, effectively removing it from the Guarantee Program, as described on Exhibit B and will be evaluated as follows:

<u>Item Reference</u>	<u>Maximum Points</u>
Projected source of new financing.....	5
Projected occupancy levels.....	20
Projected loan to value.....	20
Projected debt service coverage ratio for refinancing.....	20
Sources of any required gap financing for refinancing.....	20
Projected realistic timeline for refinancing.....	10
5% of New ELI units set-aside for Special Needs Households.....	5
Total Points Available	100

Eligible Proposals that commit to set-aside at least 50 percent of the New ELI units for Special Needs Households that are referred by designated Special Needs Household Referral Agencies up to 10 percent of the Development’s total units being New ELI will be awarded 5 points as provided in the above listing of Maximum Points.

The Committee shall conduct one public meeting during which the Committee may discuss their evaluations, select Applicants most likely to be considered for award, make any adjustments deemed necessary to best serve the interests of Florida Housing’s mission, and develop a recommendation or series of recommendations to the Board. The Committee will then rank the Proposals deemed eligible for funding in order of the SAIL ELI loan funding Priorities and preferences as outlined in Section Six B. above, applying the lottery tie-breaker as needed. The Committee shall also use the various scored items as a part of its evaluation and recommendation process. The Committee may make a recommendation, in addition to providing the ranking information and the information from the non-scored items to the Board for the Board to use in making the final selection. The Committee may also give the Board a written and/or verbal narrative describing the reasons for any recommendation. The Board may use the Proposals, the Committee’s scoring, any other information or recommendation provided by the Committee or Staff, and any other information the Board deems relevant in its selection of Applicants to whom to award funding. Notwithstanding an award by the Board pursuant to this RFP, funding will be subject to a positive recommendation from the Credit Underwriter based on criteria in Fla. Admin. Code Rule Chapter 67-48.

**SECTION EIGHT
AWARD PROCESS**

Florida Housing shall provide notice of its decision, or intended decision, for this RFP on Florida Housing's Website the next business day after the applicable Board vote. After posting, an unsuccessful Applicant may file a notice of protest and a formal written protest in accordance with Section 120.57(3), Fla. Stat., et. al. Failure to file a protest within the time prescribed in Section 120.57(3), Fla. Stat., et. al. or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, Fla. Stat.

FLORIDA AFFORDABLE HOUSING GUARANTEE PROGRAM MULTIFAMILY PORTFOLIO DATA

							Sep-10
							Four Month Average
RFP 2010-16, Exhibit A							DSCR
Development Name	Closing Date	Units	R/S?	Annual D/S		12/31/2009	Occupied Units
				12/31/09	12/31/09	(12 mo, audit)	Percent
Country Club Villas	09/22/99	430	N	721,743	1,395,257	1.93	98.96%
Country Club Villas II	06/08/01	214	N	820,800	1,402,258	1.71	98.01%
Pembroke Park	03/31/98	244	N	800,613	1,366,369	1.71	96.00%
Miami Stadium	07/31/01	336	N	1,291,859	2,083,109	1.61	99.18%
Villa Esperanza	09/18/98	192	N	598,230	885,381	1.48	94.43%
Pembroke Villas	06/26/01	180	N	864,778	1,200,230	1.39	96.11%
Marbrisa	08/25/00	368	N	1,353,374	1,825,819	1.35	99.12%
Stirling I	03/25/98	147	N	716,383	898,516	1.25	95.41%
Stirling II	03/11/99	104	N	461,421	571,977	1.24	96.88%
Crossings at University	12/15/98	320	N	1,049,967	1,212,285	1.15	98.20%
Monterey Pointe	06/12/01	336	N	987,912	1,126,220	1.14	98.29%
Golden Lakes	09/24/97	280	N	1,223,792	1,337,443	1.09	98.21%
Cross Keys	03/31/98	322	N	1,292,634	1,396,045	1.08	95.96%
Pinnacle Palms	06/28/01	152	N	680,862	694,479	1.02	91.61%
Banyan Pointe (fka: Pointe at Banyan Trails)	05/10/00	300	N	1,527,959	1,517,653	0.99	99.08%
Cedar Grove	07/27/01	288	N	1,408,892	1,377,939	0.98	98.44%
Bridgewater Place	03/31/99	312	N	1,407,282	1,309,603	0.93	99.52%
Venice Cove	06/14/01	150	N	779,427	717,073	0.92	99.87%
Ashton Point	12/20/00	268	N	947,281	852,553	0.90	90.30%
Colony Park	08/24/01	130	N	719,685	618,929	0.86	94.62%
Carolina Club	05/30/01	224	N	758,096	644,382	0.85	96.09%
Wentworth II	03/15/99	264	N	1,030,494	857,929	0.83	92.42%
Priority 1							
Logan Pointe	08/25/99	248	N	1,138,825	912,361	0.80	82.16%
Pasco Woods	06/23/99	200	N	663,872	522,594	0.79	82.13%
Windsor Park	05/31/98	240	N	1,250,682	929,811	0.74	90.94%
Bernwood Trace	08/12/99	340	N	1,655,097	1,032,877	0.62	91.47%
Spring Harbor	07/20/99	248	N	1,205,883	686,972	0.57	96.07%
Whistler's Green	05/04/99	168	N	\$606,276	337,305	0.50	94.49%
Sunset Bay	12/15/00	308	N	1,129,138	510,159	0.45	94.24%
Stratford Point	11/29/00	384	N	1,574,277	587,335	0.37	92.38%
Vista Palms (fka: Andros Isle)	06/20/01	229	N	836,442	263,058	0.31	79.26%
Oak Glen	11/28/01	88	N	330,185	18,465	0.06	90.34%
Preserve at Oslo (fka:Woods of Vero Beach)	09/21/99	176	N	571,728	(160,230)	-0.28	96.16%
Vizcaya Villas	09/24/96	174	Y	668,608	905,376	1.35	99.14%
Mar Lago	06/30/97	216	Y	1,049,940	1,405,687	1.34	95.37%
Holly Cove	12/05/95	202	Y	554,388	704,625	1.27	90.84%
Logan Heights	09/29/99	360	Y	1,107,663	1,351,350	1.22	93.54%
Spinnaker Cove	07/23/96	220	Y	857,189	977,940	1.14	99.89%
Stoddert Place (fka: Stoddert Arms)	09/26/96	320	Y	933,057	997,135	1.07	96.02%
Landings at Sea Forest	12/12/96	200	Y	590,416	604,698	1.02	92.25%
Reserve at Northshore	07/31/97	200	Y	691,697	698,732	1.01	94.63%
Walden Park	11/15/01	300	Y	1,305,412	1,316,988	1.01	94.50%
Marina Bay	12/14/00	192	Y	823,566	769,345	0.93	98.83%
Waverly	05/31/00	260	Y	1,304,717	1,164,066	0.89	91.92%
Woodridge	09/27/99	254	Y	1,062,580	894,166	0.84	97.24%
Grande Pointe	11/21/00	288	Y	1,045,760	864,159	0.83	77.99%
Priority 2							
Worthington	12/14/95	300	Y	1,172,806	936,775	0.80	93.33%
Leigh Meadows	09/26/96	304	Y	810,852	637,790	0.79	85.77%
Willow Lake	12/29/97	428	Y	1,449,183	999,667	0.69	91.24%
Sundance Pointe	12/12/00	288	Y	1,316,838	895,450	0.68	77.95%

FLORIDA AFFORDABLE HOUSING GUARANTEE PROGRAM MULTIFAMILY PORTFOLIO DATA

RFP 2010-16, Exhibit A							Sep-10
							Four Month Average
Development Name	Closing Date	Units	R/S?	Annual D/S 12/31/09	NOI 12/31/09	DSCR	Occupied Units
						12/31/2009 (12 mo, audit)	Percent
Priority 2 continued							
Noah's Landing	11/14/01	264	Y	1,249,233	824,494	0.66	92.23%
Woodbridge at Walden Lake	09/24/96	236	Y	817,425	520,804	0.64	91.42%
Wyndham Place	12/29/00	260	Y	952,047	525,191	0.55	85.00%
Reserve at Kanapaha	07/31/97	272	Y	1,062,580	518,814	0.49	94.12%
Nassau Bay I (fka: Brittany of Rosemont I)	02/09/95	252	Y	1,004,569	475,684	0.47	73.51%
River Trace (fka: River Trace Senior)	12/28/00	160	Y	597,798	268,024	0.45	92.28%
Nassau Bay II (fka: Brittany of Rosemont II)	11/14/95	240	Y	911,555	398,379	0.44	80.10%
Sabal Chase	11/09/00	340	Y	1,219,330	512,119	0.42	84.04%
Windchase	06/18/97	352	Y	997,448	380,126	0.38	81.04%
Westwood	01/26/01	288	Y	1,042,509	328,145	0.31	84.46%
Tuscany Place	06/13/03	340	Y	1,030,407	1,364,676	1.32	93.14%
Mission Pointe (fka: Mallard's Landing)	01/30/02	388	Y	1,168,232	1,398,587	1.20	90.91%
Hibiscus Pointe	07/25/03	212	Y	749,372	873,128	1.17	97.29%
Andrews Place II	06/30/05	120	Y	307,819	344,757	1.12	90.42%
Alhambra Cove	04/14/04	240	Y	904,051	993,865	1.10	97.50%
Baywinds	07/02/02	204	Y	760,661	821,514	1.08	98.77%
Eagle Pointe	03/13/03	192	Y	832,596	884,031	1.06	97.79%
Garfield Place	01/29/04	228	Y	688,105	723,306	1.05	91.89%
Clipper Bay	02/24/04	276	Y	799,080	831,043	1.04	91.94%
Harbour Cove	07/29/03	212	Y	1,076,923	1,097,135	1.02	99.65%
Wilmington	09/27/02	200	Y	696,748	697,734	1.00	92.50%
Westminster	03/06/02	270	Y	1,110,539	1,108,142	1.00	99.44%
Indian Trace	06/28/02	330	Y	1,601,859	1,596,154	1.00	91.89%
Chapel Trace	01/29/03	312	Y	1,169,411	1,157,717	0.99	88.94%
Andrews Place	07/31/03	200	Y	565,353	548,393	0.97	91.50%
St. Croix	08/02/02	246	Y	1,167,303	1,132,284	0.97	95.93%
Pinnacle at Abbey Park	03/14/03	160	Y	745,235	722,878	0.97	94.69%
Bonita Pointe	08/26/03	164	Y	614,225	587,893	0.96	99.09%
Captiva Club	09/13/02	136	Y	545,050	519,443	0.95	99.45%
Mariner's Cove	07/18/02	208	Y	791,408	724,525	0.92	95.19%
Portofino	02/27/03	270	Y	1,132,672	1,030,732	0.91	96.30%
Priority 3							
San Marco	06/25/02	260	Y	1,002,672	876,486	0.87	97.12%
Bristol Bay	10/15/03	300	Y	1,059,620	916,217	0.86	93.42%
Malibu Bay	11/10/03	264	Y	1,103,461	926,908	0.84	88.26%
Whispering Woods	07/23/02	200	Y	927,301	758,432	0.82	88.50%
The Villas At Lake Smart	11/26/02	220	Y	665,225	493,268	0.74	80.12%
Peacock Run	07/31/02	264	Y	916,278	662,232	0.72	95.17%
Hampton Point	09/25/03	284	Y	911,482	528,660	0.58	93.49%
Venetian Isles II (fka: Westlake II)	08/06/02	112	Y	590,807	330,852	0.56	93.17%
Venetian Isles I (fka: Westlake I)	02/28/02	288	Y	1,358,342	543,337	0.40	94.20%
Tuscan Isle (fka: Heron Cove)	12/04/02	298	Y	944,133	189,302	0.20	97.35%

Exhibit B to RFP 2010-16 - Request for SAIL ELI loan Funding

1. Name of Proposed Development: _____

2. Original Application No.: _____

3. Detailed description of development's ability to refinance the development, effectively removing it from the Guarantee Program if awarded funds under this RFP and applying those funds as required in Section Six, A. 3., above. Description should include, but is not limited to, projected source of new financing; projected occupancy levels; projected loan to value; projected debt service coverage ratio; sources, timing and associated contingencies of and any required gap financing; and realistic timeline for refinancing (may be included on a separate page, but becomes a part of the Proposal). This item is not required for Priority 4 Applicants.

4. Requested number of New ELI units at: _____ 60% AMI or at: _____ AMI

The undersigned agrees to abide by all conditions of this RFP, and certifies that (i) all information provided in this Proposal is true and correct, (ii) that I am authorized to sign this Proposal for the Applicant, (iii) that funds received under this RFP will first be used to reduce the first mortgage note guaranteed by the Florida Affordable Housing Guarantee Program, and then, if applicable, the Subordinate Mortgage Initiative funding, (iv) that Priority 1, 2 and 3 Applicants will use their best efforts to refinance the development, effectively removing it from the Guarantee Program, and (v) that the Applicant is in compliance with all requirements of the RFP.

Signature of Applicant

Name (typed or printed)

Title (typed or printed)

FLORIDA HOUSING FINANCE CORPORATION
Modification of Requests for Proposals (RFP) 2010-16
Extremely Low Income (ELI) Households

Pursuant to Fla. Admin. Code R. 67-49.004, Modification of Terms of Invitation to Bid, Invitation to Negotiate, Request for Proposals or Request for Qualifications, Florida Housing hereby modifies paragraph B.2 in Section Four of the RFP as follows:

- “2. Applicants must commit to set aside units for ELI Households by converting units equal to or greater than 60 percent AMI households committed to in their existing EUA or MMRB LURA down to the ELI AMI level (“New ELI Units”), so that the ELI set-aside is equal to or less than:
- a. 5 percent of the total units in a Development whose average occupancy from June 2010 through September 2010 based upon Program Reports submitted pursuant to the requirements of Rule Chapter 67-53, F.A.C. was equal to or greater than 92%, with debt service coverage ratios greater than 0.35, but less than or equal to 0.80, as calculated by Florida Housing based upon the December 31, 2009 audited financial statements for the Applicant’s development; and
 - b. 10 percent of the total units in a Development consisting of 275 units or less whose average occupancy from June 2010 through September 2010 based upon Program Reports submitted pursuant to the requirements of Rule Chapter 67-53, F.A.C. was less than 92%, with debt service coverage ratios equal to or greater than 0.50, but less than or equal to 0.80, as calculated by Florida Housing based upon the December 31, 2009 audited financial statements for the Applicant’s development; and
 - c. the lesser of 65 New ELI units or 20 percent of the total units in a Development consisting of 275 units or less whose average occupancy from June 2010 through September 2010 based upon Program Reports submitted pursuant to the requirements of Rule Chapter 67-53, F.A.C. was less than 92%, with debt service coverage ratios greater than 0.35, but less than 0.50, as calculated by Florida Housing based upon the December 31, 2009 audited financial statements for the Applicant’s development; and
 - d. the lesser of 65 New ELI units or 20 percent of the total units in a Development consisting of more than 275 units whose average occupancy from June 2010 through September 2010 based upon Program Reports submitted pursuant to the requirements of Rule Chapter 67-53, F.A.C. was less than 92%, with debt service coverage ratios equal to or greater than 0.35, but less than or equal to 0.80, as calculated by Florida Housing based upon the December 31, 2009 audited financial statements for the Applicant’s development.”

Submitted by:

Sherry Green
Contracts Administrator
Florida Housing Finance Corporation
sherry.green@floridahousing.org

FLORIDA HOUSING FINANCE CORPORATION
Second Modification of Requests for Proposals (RFP) 2010-16
Extremely Low Income (ELI) Households

Pursuant to Fla. Admin. Code R. 67-49.004, Modification of Terms of Invitation to Bid, Invitation to Negotiate, Request for Proposals or Request for Qualifications, Florida Housing hereby modifies Section Seven of the RFP in part as follows:

“Priority 1, 2 and 3 Eligible Proposals that meet Threshold will be scored on the development’s ability to refinance the development, effectively removing it from the Guarantee Program, as described on Exhibit B and will be evaluated as follows:

<u>Item Reference</u>	<u>Maximum Points</u>
Projected source of new financing.....	5
Projected occupancy levels.....	20
Projected loan to value.....	20
Projected debt service coverage ratio for refinancing.....	20
Sources of any required gap financing for refinancing.....	20
Projected realistic timeline for refinancing.....	10
50% of New ELI units set-aside for Special Needs Households.....	5
Total Points Available	100”

Submitted by:

Della M. Harrell
Corporation Clerk
Florida Housing Finance Corporation
della.harrell@floridahousing.org

Questions and Answers for Request for Proposals (RFP) 2010-16
ELI SAIL Guarantee Funding

Question 1:

Can you confirm the name of the development for Spring Harbor shown as priority #1, per Threshold item Exhibit "B" requested is Spring Harbor, Ltd? This is the legal name of the owner.

Answer:

Correct.

Question 2:

Can you confirm the Application number for Spring Harbor, Ltd, requested per Threshold Exhibit "B" is MMRB # MR1999C1 and C2; HC #2000-502 ?

Answer:

Correct.

Question 3:

Can you verify that the definition of ELI, Extremely Low Income is per the FHFC website and attached schedule is based on each County and for Lake County where Spring Harbor is located, the ELI is 33% of AMI and is the proper ELI to use for this RFP?

Answer:

Correct.

Question 4:

Can you confirm that the ELI units are to be spread proportionately by unit type at the community?

Answer:

Yes, additionally, Section 8 voucher holders may not be used to satisfy the ELI Set-Aside requirement of subparagraph 2.2(a) above, unless those households' vouchers are paying rents only up to the ELI rent level.

Questions and Answers for Request for Proposals (RFP) 2010-16
ELI SAIL Guarantee Funding

Question 5:

We want to apply in the existing owner entity, but have a new general partner, are there any issues we need to address with not applying in the existing complete ownership entity?

Answer:

The Applicant must be authorized to sign the Proposal for the Applicant. Additionally, if awarded funds under RFP 2010-16, the Applicant must be able to furnish due diligence items for the closing, including but not limited to: 1) Limited Partnership Agreement of Borrower, with all amendments, 2) Incumbency Certificate for General Partner of Borrower, 3) Opinion of Borrower's Counsel, and 4) Certified resolutions of the Borrower authorizing the execution and delivery of the loan documents.

Question 6:

Does the new refinancing need to fully repay all of the guarantee loan and all of the SMI?

Answer:

The refinancing contemplated in Section Six A. 3. must fully repay the mortgage note guaranteed by the Florida Affordable Housing Guarantee Program, effectively removing the Development from the Guarantee Program.

Applicants responding to RFP 2010-16 that also received Subordinate Mortgage Initiative funding expressly agreed to "use its good faith, best efforts to refinance, sell and/or otherwise effectively remove the Development (its first mortgage financing) from the Florida Housing Guarantee Program" when they executed the loan documents for the Subordinate Mortgage Initiative funding.

Question 7:

If the SMI does not need to be fully repaid does this affect scoring if it is not fully repaid?

Answer:

Yes, the refinancing contemplated in Section Six A. 3. will be evaluated according to Section Seven.

Questions and Answers for Request for Proposals (RFP) 2010-16
ELI SAIL Guarantee Funding

Question 8:

New ELI Units: Do we round up or down. For example, if the New ELI units are 10% of the total units, and the total units are 288, are the NEW ELI units equal to 29 units, or are the New ELI units equal to 28 units?

Answer:

Results that are not a whole number will be rounded up to the next whole number. In the example provided in Question 8, the correct answer would be 29 units.

Question 9:

ELI: Do we select the ELI AMI set forth in the 2011 Universal Cycle application, for each County respectively?

Answer:

No, the rule governing the 2011 Universal Cycle Application has not been adopted. The ELI County Chart included in the 2009 Universal Application Instructions, adopted and incorporated by reference pursuant to 67-48.004 (1) (a). F.A.C. is the applicable chart for purposes of RFP 2010-16 and is attached.

Question 10:

For Exhibit B, #4 of the RFP: “Requested number of New ELI units at: ___ 60% AMI or at ___ AMI”,

Why is 60% AMI a choice for #4, as 60% AMI is not ELI.

Answer:

RFP 2010-16 requires Applicants to convert units equal to or greater than 60 percent AMI to New ELI units. In the first part of Exhibit B 4., Applicants are expected to insert the number of units that will be converted to New ELI units in the blank before 60% AMI. In the second portion, following “or” Applicants are expected to insert the number of units that will be converted to New ELI units and then a number greater than 60% AMI representing the current AMI of the units that will be converted to New ELI units.

Example:

Requested number of New ELI units at: [insert #] 60% AMI or at [insert #] [insert current AMI of units greater than 60% that will be converted to New ELI units or note that units currently have no AMI restrictions]AMI

Questions and Answers for Request for Proposals (RFP) 2010-16
ELI SAIL Guarantee Funding

Question 11:

For Exhibit B, #4 of the RFP:

For the 2nd two blanks, does the RFP mean to state that the Applicant should write in how many New ELI units at X% AMI we are committing to?

Answer:

Please see Answer to Question No. 10.

Question 12:

Please confirm that Priority I applications are ranked before Priority 2 applications, which are ranked before Priority 3 applications, which are ranked before Priority 4 applications.

Answer:

Correct.

Question 13:

Please also confirm that with regard to paragraph (a) on the top of page 10, that the paragraph should be modified to include the following: If and only if two Proposals are tied within the same Priority level for debt service coverage and both Proposals request the same number of SAIL ELI units, then the ranking goes to the Proposal with the lowest lottery number.

Currently, this paragraph (a) appears to be in conflict with the ranking paragraph on the bottom of page 9, and the amended paragraph above would make it consistent with the ranking process noted on the bottom of page 9. That ranking paragraph on page 9 appears to state that all else being equal, the rankings are Priority 1 Proposals over Priority 2 Proposals, etc. and within each Priority, the project with the highest debt service coverage gets ranked higher (again, assuming all the scores are the same). If that is the case, the amended paragraph (a) above is needed in order to be consistent with page 9 ranking instructions.

Answer:

Correct.

Questions and Answers for Request for Proposals (RFP) 2010-16
ELI SAIL Guarantee Funding

Question 14:

Section 4 looks to provide limits to each Development based upon occupancy and DSCR that ranges from 5% to 20% ELI units , if a Priority 1 Development has a Gap funding that is not met by the 5% , can we request additional ELI units up to the 20% or above the amount shown in section 4B2a or 4B2b ?

Answer:

No.

Question 15:

When calculating the ELI unit percentage, do we round up, for example if the 5% equals 4.5 units , do we use 5 units for ELI

Answer:

Please see Answer to Question No. 8.

Question 16:

Can you provide the rationale and formula for the different ELI set asides in section 4B2a, 4B2b, 4B2c and 4B2d?

Answer:

Florida Housing has experienced eight claims/foreclosures in the Guarantee Fund portfolio since November 2008 with the most recent claim occurring in April of this year. In 2009, Fitch downgraded the insurer strength rating of the Guarantee Fund to an A-. Further claims against the Guarantee Fund pose a risk of further downgrade to the rating. In addition to the loss of those Guarantee Fund development units that would occur in the event of a claim and subsequent foreclosure, such claims and further potential downgrade of the Fund's rating put at risk future state housing trust fund resources.

To mitigate against further claims/foreclosures in the Guarantee Fund portfolio, Florida Housing has attempted to (1) halt cannibalization of current Guarantee Fund developments by keeping new units serving similar households from being built in close proximity to existing Guarantee Fund transactions with low occupancy; and (2) provide resources through the Subordinate Mortgage Initiative to aid struggling transactions in the Fund's portfolio for a short term period.

Florida Housing has many units in its portfolio, including the Guarantee Fund portfolio, that are targeted to households earning up to 60% of Area Median Income (AMI) that, in

Questions and Answers for Request for Proposals (RFP) 2010-16
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many of the softer rental markets throughout the state, are currently empty. Each year, Florida Housing carries out an evaluation of six months of physical occupancy data for Florida Housing's entire portfolio. This analysis, along with more detailed information about the Guarantee Fund properties and data on new affordable rental units under construction, allows Florida Housing to target financing to areas of the state where housing is most needed. Based on data for the first 6 months of 2010, the staff has proposed to increase the number of entire counties or areas of counties considered to be saturated from 24 in 2009 to 35 in the next Universal Application Cycle – over half of the state. The statewide rental needs study, however, indicates a great need for units targeted to households earning extremely low incomes (generally meaning 30% AMI and below).

On July 7, 2010, the Board authorized staff to allocate the ELI funding (almost \$28.5 million) and remaining SAIL funding (just over \$23.3 million) through a Request for Proposals process to existing Florida Housing developments, giving preference to developments in the Guarantee Fund portfolio, to “buy down” the AMI set-aside for units targeted to 60% AMI so that they will be set-aside for ELI households. RFP 2010-16 and Section Four B are intended to allocate the ELI funding to maximize a development's ability to refinance the development, effectively removing it from the Guarantee Program and thereby ceding risk. The amount of New ELI units available to developments with higher average occupancy is limited to have the least negative impact to cash flow available for debt service in order to reduce the potential of a development not meeting its debt service requirement. In addition, Florida Housing does not have an adequate supply of SAIL ELI funds to fund all potential applicants.

Question 17:

If we request additional ELI units above the amount noted in 4B2a and 4B2b, will that affect our scoring or our ability to get awarded ELI units and funding?

Answer:

Not necessarily, however, Section Six B. provides a preference for Proposals requesting SAIL ELI set-aside units below the maximum number over Proposals requesting the maximum number of SAIL ELI set-aside units within each Priority.

Question 18:

Is there an additional funding planned for SAIL/ELI units for the guarantee program?

Answer:

Not at this time.

Questions and Answers for Request for Proposals (RFP) 2010-16
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Question 19:

Section 6 B. a., on page 10 of RFP 2010-16, gives preference to smaller developments since community size, and therefore the percentage of total development units newly set-aside for ELI residents, is not considered in the ranking. Why is community size not considered?

Answer:

Section Six B. a. on page 10 provides: "In the event that two (2) or more Proposals requesting the same amount of SAIL ELI set-aside units, preference will be given to the Proposal with the lowest lottery number." Question 19 does not appear to be applicable to the referenced portion of RFP 2010-16.

Question 20:

Exhibit B to RFP 2010-16 Item 4. - The reference to 60% is confusing. What is the proper way to fill in this item?

Answer:

Please see Answer to Question No. 10.

Question 21:

Please clarify how Section 4A (Affirmation of information and commitments in Original Application) should be addressed in the Proposal for Projects that have had changes in General Partners and/or debt structure (i.e. GP removal, additional debt), etc.

Answer:

Section Two defines Original Application as The Application, including any changes approved by the Board, for which the Applicant received a mortgage note guarantee from the Florida Affordable Housing Guarantee Program.

Question 22:

Also, will the ELI set-aside be for income limits only, or will the ELI set-aside necessitate a similar reduction in rents?

Questions and Answers for Request for Proposals (RFP) 2010-16
ELI SAIL Guarantee Funding

Answer:

Pursuant to Section Five C. and Rules 67-48.0075 (7), F.A.C., and 67-48.010 (17), F.A.C., “rent controls for ELI Households shall consist of the Gross Rent Floor, as defined in Section 42(g)(2)(A) of the IRC and in accordance with IRS Revenue Procedure 94-57, minus the lesser of (i) the utility allowance in effect by the applicable local Public Housing Authority (PHA) at the date the last building in the Development is placed-in-service or (ii) the current utility allowance applicable to the building (as outlined in 26 CFR 1.42-10, this may include either the local utility company estimate or the applicable PHA utility allowance). Notwithstanding the preceding sentence, the rent charged to any ELI Household may not exceed the maximum rent level permitted under Section 42(g)(2)(A) IRC for the applicable unit occupied by such household.”

Question 23:

Relative to the refinance portion of the proposal:
For projected loan-to-value - can the Lender provide LTV requirements or a cap rate?
Does FHFC have proscribed cap rates for each project area?

Answer:

Responses to Exhibit B 3. should contain a detailed description of the Applicant’s ability to refinance the development. Florida Housing does not have proscribed cap rates for each project area.

Question 24:

Relative to the refinance portion of the proposal:
What is FHFC's expectation for the projected realistic time frame for closing of a refinance proposal without reduction of awarded points?

Answer:

Proposals submitted in response to RFP 2010-16 will be evaluated pursuant to Section Seven and each Individual Committee members independent review of the answers from each Applicant. It is anticipated that responses to Exhibit B 3. discussing the projected realistic timeline for refinancing will vary based upon the unique circumstances for each Development.

Question 25:

For the 50% of New ELI set-aside for Special Needs Households, will this be a target population set aside, or a requirement that units be held for these SNH?

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Answer:

It is anticipated that the New ELI Units set-aside for Special Needs Households will be held open for no more than 14 days. In most cases, Special Needs Referral Agencies will have a waiting list of interested and pre-screened households ready to apply immediately for the units as they come available. If no Special Needs Households have been referred after the agreed upon period, the units may be rented to any eligible ELI household.

Question 26:

In the instance where application of the percentages in Section Four, paragraph B.2. results in a partial unit, is it correct to round up to the next whole unit. For example, 5% of 384 units equals 19.2 units. Are we correct in rounding up to 20 units, or must we restrict the request to 19 units?

Answer:

Please see Answer to Question No. 8.

SPRING HARBOR, LTD
1275 Lake Heathrow Lane, Suite 115
Heathrow, Florida 32746

RECEIVED
10 NOV 30 PM 5:00

FLORIDA HOUSING FINANCE CORPORATION

November 30, 2010

VIA HAND DELIVERY

Ms. Sherry Green
Contracts Administrator
Florida Housing Finance Corporation
227 N. Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

wrong time stamp
Sherry

Re: Notice of Protest of Terms of Request for Proposals 2010-16: RFP 2010-16 For Extremely Low Income (ELI) Households, posted 11-19-10 at 4:45PM, modified 11-22-10 at 3:45PM and 2nd modification 11-24-10 at 1:56PM

Dear Ms. Green,

Spring Harbor, Ltd. ("Spring Harbor") is the owner of that certain affordable rental community in Mt. Dora that intends to submit a proposal for the referenced RFP.

This letter constitutes Spring Harbor's Notice of Protest pursuant to §120.57(3), Fla. Stat., of the terms of the RFP as amended on November 19, 2010 at 4:45PM. This Notice is timely because the amending of the RFP on November 24, 2010 at 1:56PM has created a new point of entry to challenge its terms. Spring Harbor plans to file a Formal Written Protest within 10 days hereafter.

Please let me know how much, if any, of a bid bond Spring Harbor needs to include when it files its Formal Written Protest. In addition, if you intend to continue with the bid solicitation process subsequent to the filing of the Formal Written Protest, notwithstanding such filing, please let me know at your earliest convenience.

Thank you.

Yours truly,

Spring Harbor, Inc., its General Partner

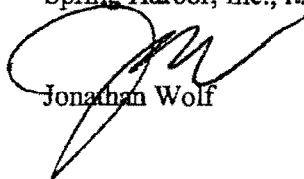

Jonathan Wolf

EXHIBIT
B

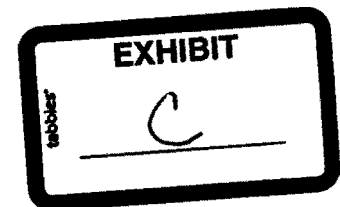


227 North Bronough Street, Suite 5000 • Tallahassee, Florida 32301
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On November 30, 2010, a Notice of Protest was filed by Spring Harbor, Ltd., regarding the terms of RFP 2010-16. Pursuant to sec. 120.57(3), Fla. Stat., the RFP process will continue as scheduled unless and until a formal bid protest is filed. The time clock had not been reset for the time change and therefore there are two date stamps on the letter. The correct time the Notice of Protest was filed was 1:00 pm on November 30, 2010. The deadline to respond to the RFP remains December 3, 2010 at 2 pm, Eastern Time.

A copy of the Letter of Protest is attached.

Sherry Green
Contracts Administrator
Florida Housing Finance Corporation



Cherie Crist, Governor

Board of Directors: David E. Oelrich, Chairman • Susan Scharaga, Vice Chairman • Tom Pelham, Ex Officio
Ken Fairman • Clifford Hardy • Jerry Maygarden • Marilyn I. Sawyer • Lynn Stultz • Leonard Tylka

Stephen P. Auger, Executive Director