

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

SPRINGFIELD CROSSINGS, LLC

Petitioner,

FHFC CASE NO. 2020-045VW
Application No. 2019-405HB

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

**PETITION FOR WAIVER OF RULES 67-21.014(2)(r)(6) F.A.C. (2018), 67-21.026(13)(e)
F.A.C. (2018), and 67-48.0072(17)(f) F.A.C. (2018)**

Petitioner Springfield Crossings, LLC (the “Petitioner”) by and through its undersigned counsel, hereby petitions Respondent, Florida Housing Finance Corporation (“Florida Housing”) for a partial waiver of Rules 67-21.014(2)(r)(6); 67-21.026(13)(e); and 67-48.0072(17)(f), Florida Administrative Code (“F.A.C.”) (2018) (the “Rule”), as incorporated and adopted by the 2018 Qualified Allocation Plan (“2018 QAP”), pertaining to the scope of work a general contractor can perform (“GC Self Performance”). In support, Petitioner states as follows:

A. THE PETITIONER

1. The address, telephone and facsimile numbers for Petitioner and its qualified representative are:

Springfield Crossings, LLC
7575 Dr. Phillips Blvd. Suite 390
Orlando, FL 32819
Attn: Chris Savino
Telephone: 407-716-1084
Fax: 407-573-0710
E-mail: CSavino@eisre.com

2. The address, telephone and facsimile number and e-mail address of Petitioner's counsel is:

Yisell Rodriguez, Esq.
Nelson Mullins Riley & Scarborough LLP
390 North Orange Avenue, Suite 1400
Orlando, Florida 32801
407-839-4290 (Phone)
407-425-8377 (Fax)
Email: yisell.rodriguez@nelsonmullins.com

3. On March 28, 2019, Petitioner timely submitted its Application in response to RFA 2019-109 for HOME Financing to be used for Rental Developments in Hurricane Michael Impacted Counties and in Rural Areas (the "RFA") to assist in the construction of a 60-unit development located in Springfield, Bay County, Florida (the "Development"). Petitioner requested HOME Financing in the amount of \$5,000,000 and Non-Competitive Tax-Exempt Bonds in the Amount of \$6,700,000. The Development received the requested allocation of HOME Financing and Non-Competitive Tax-Exempt Bonds and Housing Credits and was invited to credit underwriting on June 28, 2019.

B. WAIVER IS PERMANENT

4. The partial waiver being sought is permanent in nature.

C. THE RULE FROM WHICH WAIVER IS REQUESTED

5. Petitioner requests a partial waiver of Rules 67-21.014(2)(r)(6); 67-21.026(13)(e); and 67-48.0072(17)(f), F.A.C. (collectively, the "Rule") as adopted by Subsection III of the 2018 QAP, which provides as follows:

Ensure that no construction or inspection work that is normally performed by subcontractors is performed by the General Contractor.

6. The Rule prevents GC Self-Performance of work that might not otherwise be generally performed by a general contractor.

D. STATUTES IMPLEMENTED BY THE RULE AND THE 2018 QAP

7. The 2018 QAP and the Rule implemented, among other sections of the Florida Housing Finance Corporation Act (the “Act”), the statutes relating to the allocation of Low-Income Housing Tax Credits contained in Section 420.5099 of the Florida Statutes. *See §420.5099, Fla. Stat. (2019)* (the “Statute”).

E. JUSTIFICATION FOR GRANTING WAIVER OF THE RULE AND SUBSECTION III OF THE 2018 QAP.

8. As mentioned above, Petitioner requests a partial waiver of the Rule prohibiting GC Self-Performance.

9. On October 10, 2018, Bay County, Florida was devastated by Hurricane Michael, a Category Five Hurricane. Affordable housing was in short supply prior to Hurricane Michael’s impact and Bay County’s limited affordable housing stock was disproportionately impacted by Hurricane Michael’s devastation. In response to Bay County’s and the surrounding Counties’ need to replace Hurricane Michael destroyed affordable housing stock, Florida Housing issued the RFA.

10. The Royal American Companies (“RAC”), based in Bay County, Florida, has been developing; building; and managing affordable housing in Bay County (and throughout the Southeast) since 1969. RAC not only performs as the General Contractor (“GC”) for all RAC developments, RAC also actively bids on and performs extensive GC work for unrelated third parties. While RAC operates as a traditional GC in areas outside of North Florida, within the geographic confines of RAC’s home territory, RAC normally performs all site work.

11. Due to the following issues, it is critical that RAC is granted a partial rule waiver to allow for the self-performance of the Development's site work:

- a) Due to the massive amount of rebuilding Bay County is experiencing, all subcontractors are booked for extended periods of time. RAC's ability to self-perform site work will ensure the Development is built as timely as possible.
- b) As can be seen from Exhibit A, 75% of the Development's site work is either materials or third-party work. Actual RAC labor dollars are approximately \$222,615 and no GC profit, overhead or general requirements percentages will be applied to this amount.
- c) RAC was able to get only one competitive bid from another site work subcontractor, which is 14% more than if RAC self-performs a portion of the site work. See attached Exhibit B.
- d) As delineated in Exhibit C, RAC's self-performance will reduce Site Work cost by 18%. In fact, by allowing RAC's self-performance of the Development's Site Work, RAC will make less profit.

12. Under Section §120.542(1), *Fla. Stat.*, and Chapter 28-104, F.A.C., Florida Housing has the authority to grant waivers to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences, in particular instances. Waivers shall be granted when the person who is subject to the rule demonstrates that the application of the rule would: (1) create a substantial hardship or, violate principles of fairness,¹ and (2) the purpose of the

¹ "Substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver. For purposes of this section, "principles of fairness" are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. 120.542(2), *Fla. Stat.* (2019)

underlying statute has been or will be achieved by other means by the person. §120.542(2), *Fla. Stat.* (2019).

13. In this instance, Petitioner meets the standards for a waiver of the Rule, and its prohibition against GC Self-Performance provided in the Rule. The requested waiver will not adversely impact the Development or Florida Housing and will ensure that 60 new affordable family housing units will be constructed timely; in a cost-effective manner; and made available for the target population in Bay County, Florida. The strict application of the Rule and their prohibition against GC Self-Performance will create substantial hardship for Petitioner because it would substantially increase the cost of the Development and significantly delay the delivery of these much-needed units in Bay County. Further, the waiver will serve the purposes of the Statute and the Act, because one of the Act's primary purposes is to facilitate the availability of decent, safe and sanitary housing in the State. In addition, the Development represents the first affordable housing units built in response to Hurricane Michael.

14. As mentioned above, the requested waiver serves the purpose of the Statute because one of the primary goals of the Statute is to facilitate the availability of decent, safe, and sanitary housing in the State of Florida for low-income households. Moreover, the Statute was enacted, in part, to encourage private and public investment in facilities for persons of low-income. By granting this waiver, Florida Housing would recognize the goal of increasing the supply of affordable housing through private investment in persons of low-income and recognizing the economic realities and principles of fundamental fairness in developing affordable rental housing. See §420.5099(2), *Fla. Stat.* (2019).

F. ACTION REQUESTED

WHEREFORE, Petitioner respectfully requests Florida Housing:

- A. Grant this Petition and all of the relief requested herein;
- B. Grant the requested partial waiver of Rule; and
- C. Grant such further relief as it may deem appropriate.

Respectfully submitted on July 1, 2020

Yisell Rodriguez

Yisell Rodriguez, Esq.
Florida Bar No. 117915
Nelson Mullins Riley & Scarborough LLP
390 North Orange Avenue, Suite 1400
Orlando, FL 32801
Tel: (407) 839-4290
Fax: (407) 425-8377
Email: yisell.rodriguez@nelsonmullins.com

Counsel for Petitioner, Springfield Crossings, LLC

CERTIFICATE OF SERVICE

HEREBY CERTIFY that the foregoing Petition was filed by electronic delivery to:

Florida Housing Finance Corporation,
Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
CorporationClerk@floridahousing.org,

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
Joint.admin.procedures@leg.state.fl.us

This 1st day of July, 2020.

NELSON MULLINS RILEY &
SCARBOROUGH LLP

By: *Yisell Rodriguez*
Yisell Rodriguez, Esq.

Exhibit A

EXHIBIT A

Springfield Crossings

Royal American Construction Co., Inc.

Description of Work	Labor	Material	Subcontract	Equipment	Job Total
Supervision	44,330.00				44,330.00
Group Ins/401K/ESOP	10,574.00				10,574.00
Layout			15,000.00		15,000.00
Maint. Of Traffic			1,435.00		1,435.00
Silt Fencing	2,164.00	1,174.00		2,182.00	5,520.00
Clearing & Grubbing	11,575.00			9,339.00	20,914.00
Excavation - Bedding Material	62,934.00		96,000.00	63,468.00	222,402.00
Stormwater	37,582.00	91,610.00	600.00	37,901.00	167,693.00
Water Main	10,775.00	14,485.00		8,602.00	33,862.00
Fire Main	9,888.00	14,819.00		8,390.00	33,097.00
Gravity Sewer	13,944.00	7,614.00		13,626.00	35,184.00
Sidewalks			57,668.00		57,668.00
Sodding	5,408.00	17,592.00			23,000.00
Asphalt Paving	13,441.00	14,572.00	110,550.00	13,556.00	152,119.00
Curbing			56,973.00		56,973.00
Striping/Signage			6,838.00		6,838.00
TOTALS	222,615.00	161,866.00	345,064.00	157,064.00	886,609.00

Exhibit B



PROPOSAL

DATE: June 2, 2020

COMPANY: Royal American Construction, Co., Inc.
 ATTN: Mr. Steve Summerbell
 PHONE: 850-769-8981
 E-MAIL: steve.summerbell@royalamerican.com

PROJECT: Springfield Crossings Apartments

We propose to perform the following work for: \$1,015,100.00

- \$25,000 - Mobilization
- \$260,985 – Sitework
- \$224,950 – Storm Piping/ Structures
- \$72,800 – Potable/ Firemain
- \$55,900 – Gravity Sewer
- \$12,500 – Surveying/ As-Builts
- \$362,930 – Pavement & Surfaces

Exclusions – Roof drain piping/ downspout connections, landscaping, payment/ performance bond, any fencing, conduit, parking bumpers, and permits.

Thank you for the opportunity to provide you with a proposal on this project. This proposal shall remain valid for thirty days.

Sincerely,

C. Corbin

Chris Corbin
Vice President of Operations

Accepted _____ Signature

_____ Print

Exhibit C

EXHIBIT C

Springfield Crossings

Royal American Construction Co., Inc.	
Sitework cost subject to GC Fee	663,994.00
General Conditions 6%	39,839.64
Overhead 2%	13,279.88
Profit 6%	39,839.64
Sitework cost Not subject to GC Fee	222,615.00
Total Sitework Cost	979,568.16

Gulf Coast Utility Contractors (GCUC)	
Sitework cost subject to GC Fee	1,015,100.00
General Conditions 6%	60,906.00
Overhead 2%	20,302.00
Profit 6%	60,906.00
Total Sitework Cost	1,157,214.00