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FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING
FINANCE CORPORATION

CASA AMIGOS EHT, LLC,

Petitioner,

vs.

FHFC Case No. 2019-058BP

RFA No. 2019-108

Application No. 2019-424S

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

**FORMAL WRITTEN PROTEST AND
PETITION FOR ADMINISTRATIVE HEARING**

Petitioner, CASA AMIGOS EHT, LLC (“Casa Amigos”), pursuant to sections 120.57(3), Florida Statutes (“F.S.”), and Rules 28-110 and 67-60, Florida Administrative Code (“FAC”) hereby files this Formal Written Protest and Petition for Administrative Hearing regarding the review, ranking, scoring and eligibility decisions of Respondent, FLORIDA HOUSING FINANCE CORPORATION (“Florida Housing”) in awarding funding pursuant to Request for Application 2019-108 SAIL Financing Farmworker and Commercial Fishing Worker Housing (the “RFA”). In support Casa Amigos provides as follows:

1. Casa Amigos is a Florida limited liability corporation in the business of providing affordable housing. Casa Amigos is located at 19308 SW 320th Street, Florida City, FL 33034.
2. Florida Housing is the allocating agency for the State of Florida that was granted the authority to issue the RFA for the purpose of construction, redevelopment, or rehabilitation of much needed affordable housing. Florida Housing's address is 227 North Bronough Street, Suite 500, Tallahassee, Florida 32301.
3. On April 11, 2019, Florida Housing issued the RFA which offered funding as follows:

This Request for Applications (RFA) is open to Applicants proposing the construction of Commercial Fishing Worker or Farmworker (including Unaccompanied Farmworker) Developments or the Substantial Rehabilitation or Acquisition and Substantial Rehabilitation of existing Farmworker or Commercial Fishing Worker Developments that are currently in the Corporation's portfolio and/or the United States Department of Agriculture Rural Development (RD) portfolio. An Unaccompanied Farmworker is an adult Farmworker as defined by Section 420.503(18), F.S., and, for purposes of this RFA, is unaccompanied by a spouse, children, or parents and may include temporary foreign agricultural workers temporarily admitted to the United States on H-2A visas.

Florida Housing Finance Corporation (the Corporation) expects to offer an estimated \$5,150,000, comprised of the Farmworker/Commercial Fishing Worker Demographic portion of the SAIL funding appropriated by the 2018 Florida Legislature as well as SAIL Program income.

The Corporation is soliciting Applications from qualified Applicants that commit to provide housing in accordance with the terms and conditions of this RFA, inclusive of all Exhibits, applicable laws, rules and regulations, and the Corporation's generally applicable construction and financial standards.

4. Through the issuance of the RFA, Florida Housing sought to solicit proposals from qualified Applicants that would provide Farmworker and Commercial Fishing Worker housing consistent with the terms and conditions of the RFA, applicable laws, rules, and regulations.

5. As it relates to Farmworker and Commercial Fishing Worker Housing, Rule 67-48.0095, F.A.C. in relevant part requires as follows:

(1) Subject to the provisions of section 420.507(48), F.S., **during the first six (6) months following the publication date of the first Notice of Funding Availability published in any year** within the state of Florida, SAIL funds shall be allocated in accordance with the ranking and selection process set forth in the applicable competitive solicitation and based upon the requirements specified in section 420.5087(3), F.S., which specifies the required funding within the five (5) demographic categories of:

(a) Family;

- (b) Elderly;
- (c) Homeless;
- (d) Commercial Fishing Workers and Farmworkers;
and,**
- (e) Persons with Special Needs.

(2) 10 percent of the funds for Developments in the Elderly category shall be made available for the EHCL Program to provide loans to Sponsors of housing for the Elderly for the purpose of making life-safety or security-related repairs or improvements to such housing which are required by federal, state or local regulation, as further specified in section 420.5087, F.S., and this rule chapter.

(3) The Corporation shall make available tentative loan amounts to Applicants in each demographic and geographic category, up to the total amount available.

(4) In the event that the 10 percent of program funds required to be allocated to counties with a population of 100,000 or less remains unallocated at the conclusion of a competitive solicitation, the unallocated funds shall be equitably distributed pursuant to Board approval.

(5) Selection for SAIL Program participation is contingent upon fund availability at the conclusion of the appeals process as set forth in rule 67-60.009, F.A.C.

(emphasis added)

6. Section 420.5087(3), F.S. further calls for not less than 5% of SAIL funds to be made available for Commercial Fishing Worker and Farmworker housing.

7. On May 7, 2019, Casa Amigos submitted its Application in response to the RFA that included information concerning the development of a 24 unit complex in Collier County, Florida, named The Casa Amigos. Farmworker and Commercial Fishing Workers housing is in great demand in Collier County, as the industry and area are still struggling to recover from the impacts of Hurricane Irma in 2017.

8. Data indicates that the proposed location of the Casa Amigos development was particularly negatively impacted by Hurricane Irma because of the presence of and ultimate destruction of the older mobile homes traditionally occupied by Farmworker and Commercial Fishing Workers.

9. Through the Application, Casa Amigos was requesting \$5,150,000 in SAIL funding to provide housing for Farmworkers and Commercial Fishing Workers. Florida Housing received only one application that being from Casa Amigos in response to the RFA.

10. At its May 10, 2019, meeting the Florida Housing Board of Directors (“Board”) in accordance with the above rule and statute provisions approved staff recommendation to approve not less than 5% of the 2019 SAIL Funds to construct housing for Commercial Fishing Workers and Farmworkers.

11. As the owner and developer of a project seeking funding through the RFA, Casa Amigos is substantially affected by the review, scoring, and ranking of the responses to the RFA. The results of this proceeding affects Casa Amigos’ ability to obtain funding through the RFA. Consistent with the primary mission and goal of the RFA, Casa Amigos seeks to provide much needed affordable housing in Collier County. Without the funds provided by the RFA, Casa Amigos will be unable to provide this much needed housing. Accordingly, Casa Amigos’ substantial interests are affected by the decisions made by Florida Housing.

12. On June 4, 2019, the designated Review Committee met and considered the Casa Amigos Application. At the meeting the Review Committee orally listed and manually input the scores for each section of the Application and ultimately made a recommendation to the Board for their consideration. The Review Committee consisted of Florida Housing staff. During the meeting, the Review Committee awarded Casa Amigos 86 out of a possible 100 points. The Review Committee however found Casa Amigos’ Application to be ineligible and not recommended for funding. On June 21, 2019, the Board accepted and approved the Review Committee’s ranking and funding recommendation.

13. On June 24, 2019, Casa Amigos timely filed its Notice of Intent to Protest. This Formal Written Protest is being timely filed and Florida Housing has waived the bid protest bond

requirement for the RFA. As a Developer of affordable housing in need of supplemental funding, Casa Amigos' substantial interests are affected by Florida Housing's decision not to award the necessary funding pursuant to the RFA. In this action Casa Amigos challenges the eligibility determination made by Florida Housing as to its own Application. If successful in its challenge Casa Amigos will be eligible and move into the funding range. No other Application will be displaced if Casa Amigos is funded. (see Exhibit A)

14. Based on the Review Committee Scorers notes the Casa Amigos Application was found ineligible based on the following:

4.c Development Type Provided – The Applicant selected Townhouses, however, for new construction Developments, only Garden Apartments are allowable under this RFA.

(See Exhibit B)

15. In addressing the Development Type Provided issue, the RFA at Section Four A(4) asked for information about the proposed Development as follows:

4. General Proposed Development Information

Unless stated otherwise, all information requested in the RFA pertains to the Development proposed in this Application.

- a. The Applicant must state the name of the proposed Development.
- b. Development Category

(1) The Applicant must select one of the following Development Categories:

- New Construction
- Rehabilitation*
- Acquisition and Rehabilitation*

*For purposes of SAIL funding, this includes Substantial Rehabilitation

(2) The proposed Development must meet the Development Category requirements for the applicable Development Category as listed below:

(a) New Construction

At least 50 percent of the total units must be new construction Substantial Rehabilitation

The Applicant is eligible to select this Development Category only if it is the current owner of the Development and will maintain ownership of the Development after the rehabilitation work is completed.

(b) Acquisition and Substantial Rehabilitation

The Applicant is eligible to select this Development Category only if it expects to acquire the existing Development and will maintain ownership of the Development after the rehabilitation work is completed.

For both (b) and (c) above, the Application must reflect an amount of at least \$15,000 per unit when the amount listed in the Total column of the Development Cost Pro Forma for the Development Cost line item A1.1. Actual Construction Cost is divided by the total number of proposed units.

During the credit underwriting process the Applicant will be required to develop and implement a plan for relocation of existing tenants.

16. The RFA further requests as follows:

c. Development Type

(1) For new construction Developments, only Garden Apartments (a building comprised of 1, 2 or 3 stories, with or without an elevator) are allowable under this RFA.

(2) For Substantial Rehabilitation of an existing Development, select the appropriate Development Type:

- Garden Apartments (a building comprised of 1, 2 or 3 stories, with or without an elevator)
- Townhouses
- Duplex
- Quadraplex
- Single Family

(Emphasis added)

17. In response to these RFA provisions Casa Amigos provided information in its Application as follows:

General Proposed Development Information

a. Name of the proposed Development:

Casa Amigos

b. Select the Development Category

New Construction

c. Select the Development Type

Townhouses

d. Enhanced Structural Systems (“ESS”) Construction Qualifications

Does the proposed Development meet the requirements to be considered ESS Construction as outlined in Section Four A.4.d. of the RFA? This is a requirement for proposed Developments with Development Category of new construction.

Yes

18. In its response Casa Amigos selected New Construction as its Development Category and intended to comply with the requirements of the RFA including construction of Garden Apartments. It was the intent of Casa Amigos to provide a 24 unit New Construction, Garden Apartment complex in Immokalee, Collier County, Florida. However Casa Amigos inadvertently selected Townhouses rather than Garden Apartments as its Development Type.

19. The inadvertent selection of Townhouses rather than Garden Apartments, to the extent it is considered a deviation, should be deemed a minor irregularity for several reasons. First the RFA itself expands the definition of Garden Apartments to include buildings comprised of “1, 2, or 3 stories” which is consistent with the generally acceptable definition of a Townhouse. In

other words there appears to be no difference in the actual “Type of Development” requested by the RFA as to Townhouses versus Garden Apartments.

20. Additionally there are no land use, zoning, height or other development limitations or issues that would limit or prohibit the construction of either Townhouses or the desired Garden Apartments on the proposed Development site.

21. Perhaps as important, as the only Application that responded to the RFA there is no competitive advantage gained by Casa Amigos in waiving the minor irregularity here. In fact, generally, construction costs for Townhouses are more than those for Garden Apartments, so the inadvertent selection of Townhouses here actually negatively impacts Casa Amigos and would place it at a competitive disadvantage. Waiving the deviation here would not negatively affect the interests of Florida Housing but in fact would fulfil a funding goal or mandate to provide much needed housing within 6 months of the date of funding availability as directed by statute and rule.

22. Failure to consider the deviation here as a minor irregularity, or to reissue the RFA, would mean Florida Housing would not meet its duty to allocate SAIL funds pursuant to the statutory and rule requirements even though an Application had been submitted which could meet that goal.

23. Finally in a similar factual situation in RFA 2016-104, SAIL FUNDING TO PRESERVE FARMWORKER AND COMMERCIAL FISHING WORKER HOUSING, Florida Housing when confronted with only one Application in response to an RFA that was deemed ineligible nonetheless funded the lone Application and waived the deviation. In essence no competitive advantage was gained by allowing the lone applicant to be funded. The same result is warranted here for this much in demand housing.

24. Casa Amigos reserves the right to amend this Petition as necessary.

Material Issues in Dispute

- a. Whether Florida Housing review and actions taken concerning Casa Amigos Application #2019-424S was arbitrary or capricious, clearly erroneous and contrary to competition.
- b. Whether the review of the Casa Amigos Application was inconsistent with the RFA requirements.
- c. Whether Casa Amigos submitted acceptable information.
- d. Whether any alleged deviation in the Casa Amigos Application is a minor implication which should be waived.

WHEREFORE, Casa Amigos requests that a settlement meeting be scheduled and to the extent no settlement is reached a hearing scheduled and ultimately the entry of a Recommended and Final Order determining that Florida Housing's review and scoring of its Application was contrary to the RFA specifications and to Florida Housing's governing statutes, rules and policies to such an extent as to be arbitrary, capricious, contrary to competition, and clearly erroneous.

Respectfully submitted,

CARLTON, FIELDS, JORDEN BURT, P.A.

/s/ Michael P. Donaldson

MICHAEL P. DONALDSON

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and a copy of the foregoing has been filed by E-Mail and Hand Delivery to Ana McGlamory Corporation Clerk, Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, FL 32301, this 3rd day of July 2019.

/s/ Michael P. Donaldson
MICHAEL P. DONALDSON



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June 24, 2019

Florida Housing Finance Corporation
Ana McGlamory, CP, FCP, FRP
Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

VIA HAND DELIVERY AND
ELECTRONIC TRANSMISSION

Re: RFA 2019-108 – SAIL Financing Farmworker and Commercial Fishing
Worker Housing

Dear Ms. McGlamory:

On behalf of Casa Amigos EHT, LLC ("Casa Amigos") (2019-424S) this letter constitutes a Notice of Intent to Protest ("Notice") filed pursuant to sections 120.569 and 120.57(3), Florida Statutes, Rules 28-110.003 and 67.60.009, Florida Administrative Code, and the RFA.

This Notice is being filed within 72 hours (not including weekends and holidays) of the posting of the RFA on the Florida Housing's website on June 21, 2019, at 12:15 p.m. Casa Amigos reserves the right to file a formal written protest within (10) days of the filing of this Notice pursuant to section 120.57(3), Florida Statutes.

Sincerely,

Michael P. Donaldson

MPD/rb

cc: Steven Kirk

RFA 2019-108

Eligibility Requirements	Exceptions/Notes
Submission Requirements met (section Three, A.)	Y
2.a. Demographic Commitment selected	Y
2.b. If Substantial Rehabilitation of existing Development, confirmation that the Development is in the Corporation or RD's portfolio	N/A
4.a. Name of Proposed Development provided	Y
4.b.(1) Development Category selected	Y
4.b.(2) Development Category Qualifying Conditions met	Y
4.c. Development Type provided	The Applicant selected Townhouses, however, for new construction Developments, only Garden Apartments are allowable under this RFA.
4.d. If new construction, qualifies as ESS Construction	Y
5.a. County identified	Y
5.b. Address of Development Site provided	Y
5.c. Question whether a Scattered Sites Development answered	Y
5.d.(1) Development Location Point provided	Y
5.d.(2) Latitude and Longitude Coordinates for any Scattered Sites provided, if applicable	N/A
6.a. Total Number of Units provided and within limits	Y
6.b. Number of new construction units and rehabilitation units provided	Y
6.d.(2) Demographic minimum set-aside selected	Y
6.d.(4) Total Set-Aside Breakdown Chart properly completed	Y
6.e. Unit Mix provided and meets requirements	Y
6.f. Number of residential buildings provided	The Applicant answered the question in the agenda since Exhibit A doesn't provide the question.
7.a. Evidence of Site Control provided	Y
7.b.(1) Appropriate Zoning demonstrated	Y
7.b.(2) Availability of Electricity demonstrated	Y
7.b.(3) Availability of Water demonstrated	Y
7.b.(4) Availability of Sewer demonstrated	Y
7.b.(5) Availability of Roads demonstrated	Y
8.d.(2) Minimum Additional Green Building Features selected	Y

Heather Greene

6/4/19