

FLORIDA HOUSING FINANCE CORPORATION
Board Meeting
October 30, 2015
Action Items



LEGAL

Action

I. LEGAL

A. New Trinity Towers South Preservation Associates, LLP, v. Florida Housing Finance Corporation, FHFC Case No.2015-031BP (Intervenor SP Preservation II, LLC)

1. Background

- a) This case regards a protest filed against the funding awards for projects under “RFA 2015-104 – Housing Credit Financing for the Preservation of Existing Affordable Multifamily Housing Developments,” (the “RFA”). The parties applied for funding through the RFA seeking allocations of Low Income Housing Tax Credits to preserve existing affordable multifamily housing developments. Petitioner (“Trinity Towers South”) was notified of the Board’s intended decision on or about August 7, 2015. Petitioner timely filed notice of intent to protest and formal written protests as required by section 120.57(3), Florida Statutes, challenging the Corporation’s proposed funding and eligibility decisions for RFA 2015-104. Intervenor (“SP Preservation”) properly and timely filed for intervention to participate in this case.
- b) The central issue in this case is whether Respondent Florida Housing Finance Corporation’s (“Florida Housing”) decision to award or deny funding under RFA 2015-104, as proposed on August 7, 2015, is contrary to the agency’s governing statutes, the agency’s rules or policies, or the solicitation specifications. More specifically, whether Florida Housing’s scoring of Trinity Towers South as ineligible was proper.
- c) Based on information discovered during the course of the litigation, Florida Housing asserted that New Trinity Towers South and Applicant 247C, Trinity Towers East Preservation Associates, LLLP, were properties that are part of a common or related scheme of development in contravention of Rule 67-48.004(1), Fla. Admin. Code.

2. Present Situation

As a result of settlement discussions, Florida Housing and Trinity Towers South have resolved certain issues in this litigation and in the interest of avoiding the time, expense and uncertainty of litigation, the parties entered into a Stipulation of Dismissal. On October 13, 2015, Trinity Towers South filed Petitioner’s Notice of Voluntary Dismissal and attached the Stipulation of Dismissal. [Exhibit A.](#)

3. Recommendation

In light of the dismissal of the protest, Staff recommends that the Board adopt the Stipulation of Dismissal into a Final Order.

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B. Resolution

1. Background

In the ordinary course of litigation, situations arise where actions are required to be taken within certain time limits, often making it impractical to seek Board approval. Routine Orders Closing File have historically been issued by the Chair, and routine variances and waivers have been brought before the Board. These actions generally involve no policy considerations with which the Board need concern itself.

2. Present Situation

- a) Draft Resolution 2015-35 delegates certain specific authority to the General Counsel and the Executive Director of the Corporation. The Resolution makes clear that the General Counsel and the Executive Director have the freedom to bring any matter that is seen as controversial or that raises significant policy issues before the Board, regardless of whether authority has been delegated. The Board also has the power to rescind this delegated authority in individual cases if it believes the case raises issues that should be considered by the Board. A copy of the Resolution is attached as [Exhibit B](#).
- b) Delegations of authority to the General Counsel are for those types of actions that involve purely legal determinations, and that must usually be accomplished in a limited timeframe.
 - (1) Accept service of process in lawsuits filed against the agency. This is already routinely done, but a specific delegation of authority will prevent any potential future challenges to the process.
 - (2) Execute pre-litigation orders regarding notices of protest and requests for extension of time to file petitions for administrative proceedings. Chapter 120, F.S., sets out specific timeframes within which documents must be filed. Under certain limited circumstances, agencies have the authority to grant requests for extensions of time in which to file notices and petitions. It would not be practical to bring this kind of order to the Board for approval in a timely manner.
 - (3) Execute final orders entered after a petition for administrative proceedings has been filed pursuant to Section 120.57, F.S., where the petition has been withdrawn or all parties have entered into a settlement resolving the issues set forth in the petition. It is agency practice to issue an Order Closing File in such cases. Because an Order Closing File is non-discretionary and involves no policy decisions, staff believes that continuing to bring these routine orders to the Board for approval is unnecessary and inefficient.

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- (4) Execute final orders dismissing petitions for administrative proceedings or variances without prejudice. Occasionally a petition will be filed with the agency that does not conform to the requirements of Rule 28-106, F.A.C., or is not timely filed. In such cases the agency is required to dismiss the petition, but may do so without prejudice to refile (that is, it will allow the petitioner leave to amend the petition to correct the errors or explain the untimeliness and file a new petition). It will usually not be practical to bring an order dismissing without prejudice to the Board for approval in a timely manner.
- c) Delegations of authority to the Executive Director are for those types of actions that may involve some policy considerations but that generally are either routine in nature or require action within a limited timeframe.

To execute final orders dismissing petitions for administrative proceedings with prejudice. If a petition is filed with the agency that does not conform to the requirements of Rule 28-106, F.A.C., and it is apparent that the petition cannot be amended to conform to these requirements, that petition must be dismissed with prejudice (that is, without granting the petitioner leave to amend the petition). If, after an order dismissing a petition without prejudice, an amended petition is filed that does not correct the errors or explain the untimeliness, the agency may dismiss the petition with prejudice. A petitioner may appeal such a dismissal to district court. It will usually not be practical to bring such an order to the Board for approval in a timely manner, but because of the finality of the action and the fact that there could on occasion be policy considerations involved staff believes it is appropriate that the Executive Director issue such orders rather than the General Counsel.

3. Recommendation

That the Board adopt Resolution 2015-35 delegating authority as described in such Resolution.

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C. Order of Ineligibility

1. Background

- a) On August 31, 2015, Gonzalo DeRamon pled guilty in Federal Court to two counts of conspiracy to commit theft of government money and property. These counts were based on submitting fraudulently inflated low-income housing construction contracts to FHFC to obtain excess federal tax credits and grant monies to which he was not entitled, and then using the proceeds for his personal use and benefit. DeRamon has been an active participant in FHFC funding programs and could potentially seek FHFC funding in the future.
- b) On August 31, 2015, Michael Cox pled guilty in Federal Court to one count of conspiracy to misappropriate government money and property. This count was based on submitting fraudulently inflated low-income housing construction contracts to FHFC to obtain excess federal tax credits and grant monies to which he was not entitled, and then using the proceeds for his personal use and benefit. Cox has been an active participant in FHFC funding programs and could potentially seek FHFC funding in the future.
- c) On September 22, 2015, Matthew Greer pled guilty in Federal Court to two counts of conspiracy to commit theft of government money and property. These counts were based on submitting fraudulently inflated low-income housing construction contracts to FHFC to obtain excess federal tax credits and grant monies to which he was not entitled, and then using the proceeds for his personal use and benefit. Greer has been an active participant in FHFC funding programs and could potentially seek FHFC funding in the future.

2. Present Situation

- a) Rule 67-48.004(2), F.A.C., authorizes the Board to determine that an applicant, or any affiliate of an applicant, will be ineligible for funding or allocation in any FHFC program for up to two years if that person has engaged in fraudulent actions involving FHFC, or been convicted of fraud, theft, or misappropriation of funds.
- b) In order to prevent the DeRamon, Cox, and Greer from continuing to benefit from FHFC programs, the Board must enter a separate Order for each subject making them ineligible to participate in any FHFC programs in the future. These orders will also make them ineligible to receive funding even if they have received a preliminary funding award.

3. Recommendation

That the Board issue the three attached Orders of Ineligibility making Gonzalo DeRamon, Michael Cox, and Matthew Greer ineligible to participate in any FHFC program for a period of two years, effective from the date of the Orders.

MULTIFAMILY PROGRAMS

Action

II. MULTIFAMILY PROGRAMS

A. 2016 Rule Development

1. Background/Present Situation

Staff would like to begin the rule development process by scheduling a rule development workshop to solicit comments concerning Rule Chapters 67-21, 67-48 and 67-60, F.A.C., and the Qualified Allocation Plan (QAP) which is incorporated by reference in Rule Chapter 67-48.

2. Recommendation

Authorize staff to proceed with the 2016 rule development process.

PROFESSIONAL SERVICES SELECTION (PSS)

Action

III. PROFESSIONAL SERVICES SELECTION (PSS)

A. Request for Proposals (RFP) 2015-02, Enterprise Payroll/Human Resources System

1. Background

- a) At the August 8, 2014 meeting, the Board authorized Florida Housing staff to issue a solicitation to procure an enterprise payroll/human resources system and authorized the Executive Director to establish a Review Committee to make a recommendation to the Board.
- b) On April 22, 2015, Florida Housing staff issued a Request for Information (RFI) to conduct formal market research on available payroll/human resource system solutions. Florida Housing received five timely responses. After review of the responses, four vendors were invited to give demonstrations of their systems.

2. Present Situation

- a) Request for Proposals (RFP) 2015-02 was issued on Friday, August 7, 2015. The deadline for receipt of responses was 2:00 p.m., Thursday, September 3, 2015. A copy of the RFP is provided as [Exhibit A](#).
- b) One response was received by the deadline from Paychex, Inc. Paychex was one of the respondents during the RFI process.
- c) Members of the review committee were Kirstin Helms (Chairperson), Assistant Comptroller; Denise Monzingo, Accounting Manager; Dinee Benton, Senior Accountant; Jessica Cherry, Human Resources Administrator; and Rene Knight, Operations Director.
- d) Each member of the Review Committee individually reviewed the proposal submitted prior to convening for the Review Committee meeting which was held at 10:00 a.m., Tuesday, September 22, 2015.
- e) At the September 22nd meeting, the Review Committee members provided their final scores for the response received. The score sheet is provided as [Exhibit B](#).

3. Recommendation

The Review Committee recommends that the Board authorize Florida Housing to enter into contract negotiations with Paychex, Inc., and should negotiations fail, that staff issue another competitive solicitation for these services.

PROFESSIONAL SERVICES SELECTION (PSS)

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B. Request for Qualifications (RFQ) 2015-04, Special Counsel Services

1. Background

At the August 7, 2015 meeting, the Board authorized Florida Housing staff to issue a solicitation to procure special counsel services and authorized the Executive Director to establish a review committee to make a recommendation to the Board.

2. Present Situation

- a) RFQ 2015-04 was issued on Friday, August 7, 2015. The deadline for receipt of responses was 2:00 p.m., Wednesday, September 9, 2015. A copy of the RFQ is provided as [Exhibit C](#).
- b) Four responses were received by the deadline from the following:
 - (1) Bryant Miller Olive, P.A.
 - (2) Latham Shuker Eden & Beaudine, LLP
 - (3) Nabors Giblin & Nickerson, P.A.
 - (4) Weiss Serota Helfman Cole & Bierman, P.L.
- c) Members of the review committee were Melanie Weathers (Chairperson), Senior Financial Administrator; Kevin Pichard, Assistant Director of the Guarantee Program; Todd Fowler, Special Assets Director; Karla Brown, Multifamily Programs Manager; and David Woodward, Federal Loan Program Manager.
- d) Each member of the review committee individually reviewed the proposals prior to convening for the Review Committee meeting. The Review Committee meeting was held at 3:00 p.m., Thursday, September 24, 2015, where each committee member provided final scores and ranked each of the responses (please see [Exhibit D](#) for a summary of scores).

3. Recommendation

- a) The review committee recommends that the Board authorize Florida Housing to enter into contract negotiations with the respondents as follows:
 - (1) For special counsel services focused on multifamily financing, all four respondents.
 - (2) For special counsel services focused on single family bonds, the top two ranked respondents, Nabors Giblin & Nickerson, P.A., and Latham Shuker Eden & Beaudine, LLP. Should negotiations fail with either of these firms, authorize Florida Housing to enter into negotiations with the third and fourth ranked respondents, Weiss Serota Helfman Cole & Bierman, P.L. and Bryant Miller Olive, P.A., in ranking order.

PROFESSIONAL SERVICES SELECTION (PSS)

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- (3) For special counsel services focused on the Guarantee Program, enter into contract negotiations with the top two ranked respondents, specifically, Nabors Giblin & Nickerson, P.A., as primary counsel, and Latham Shaker Eden & Beaudine, LLP, as back-up counsel. Should negotiations fail with either party, authorize Florida Housing to enter into negotiations with the third and fourth ranked respondents; Weiss Serota Helfman Cole & Bierman, P.L. and Bryant Miller Olive, P.A., in ranking order.

PROFESSIONAL SERVICES SELECTION (PSS)

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C. **Request for Qualifications (RFQ) 2015-05, Technical Assistance Provider Services for the Predevelopment Loan Program, Demonstration Loans and Other Florida Housing Programs**

1. **Background**

At the August 7, 2015 meeting, the Board authorized Florida Housing staff to issue a solicitation to procure one or more vendors to provide technical assistance provider services for the Predevelopment Loan Program, Demonstration Loans and Other Florida Housing Programs and authorized the Executive Director to establish a review committee to make a recommendation to the Board.

2. **Present Situation**

- a) RFQ 2015-05 was issued on Friday, August 7, 2015. The deadline for receipt of responses was 2:00 p.m., Thursday, September 10, 2015. A copy of the RFQ is provided as [Exhibit E](#).
- b) Three responses were received by the deadline from the following:
 - (1) Capital Access, Inc.;
 - (2) Corporation for Supportive Housing, Inc.; and
 - (3) Florida Housing Coalition
- c) Members of the review committee were Rob Dearduff (Chairperson), Special Programs Administrator & Local Government Liaison; Elaine Roberts, Senior Supportive Housing Analyst; and Nicole Everett, Special Programs Manager.
- d) Each member of the Review Committee individually reviewed the proposals submitted prior to the Review Committee meeting which was held at 2:00 p.m., Thursday, October 1, 2015.
- e) At the October 1st meeting, the Review Committee provided final scores and ranked each of the responses. The score sheet is provided as [Exhibit F](#).

3. **Recommendation**

The Review Committee recommends that the Board authorize Florida Housing to enter into contract negotiations with all three respondents.

SINGLE FAMILY HOMEOWNERSHIP PROGRAM

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IV. SINGLE FAMILY HOMEOWNERSHIP PROGRAM

A. Single Family Homeownership Program

1. Background

- a) Florida Housing issues bonds under two master bond indentures. The 2009 Homeowner Mortgage Revenue (Special Program) Bond Indenture (the “NIBP Master Indenture”) was created for the purpose of implementing the United States Treasury’s New Issue Bond Program (the “NIBP”). The NIBP Master Indenture is currently rated “Aaa” by Moody’s Investors Service. Florida Housing also issues single family bonds under its 1995 Homeowner Mortgage Revenue Bond Indenture (the “1995 Master Indenture”). The 1995 Master Indenture is currently rated “AA+” by Standard & Poor’s Rating Services, “Aa1” by Moody’s Investors Service and “AA+” by Fitch Ratings; provided, however that only one such rating currently is required under the 1995 Master Indenture.
- b) Florida Housing has approximately \$2.10 billion of volume cap that has been allocated for single family bond issuance. The \$2.10 billion consists of \$1.05 billion of 2012 carry forward, \$521.1 million of 2013 carry forward and \$525.7.1 million of 2014 carry forward. It is expected that additional allocation from 2015 will be added to the carry forward from prior years. The 2012 carry forward will expire on December 31, 2015.
- c) Due to difficult conditions in the municipal bond market but attractive pricing of Mortgage-Backed Securities (“MBS”) in the mortgage market, commencing on October 31, 2008, the Board approved multiple resolutions allowing Staff to access funding for Florida Housing’s single family lending program through the sale of specified pools or To-Be-Announced (“TBA”) commitments in the MBS mortgage market purchased by Florida Housing under its Homeowner Mortgage Program (the “Single Family Program”). This year, through October 8, 2015 Florida Housing has sold over \$197.5 million of newly originated Ginnie Mae MBS and \$169.8 million of Fannie Mae MBS in this mortgage market. Staff expects to continue periodic funding of the Single Family Program through the sale of MBS when market conditions are favorable at the time of sale. Recently, however, financing alternatives in the municipal market have again become more attractive. The sale of bonds in the municipal market can be for: (1) refunding outstanding high coupon bonds that are currently subject to optional redemption, and (2) continuing Florida Housing’s single family lending program through the pooling of Mortgage Loans into Guaranteed Mortgage Securities under Florida Housing’s Homeowner Mortgage Program. Staff will continue to evaluate market conditions and, should market conditions warrant, may sell a portion or all MBS in the TBA or specified pool market, rather than issue bonds, to fund new production and refund the outstanding bonds subject to optional redemption.

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2. **Present Situation**

a) Below is a chart of bonds that are subject to optional redemption:

1995 Indenture					
Bond Series	2006 Series 1	2006 Series 2&3	2006 Series 4-5	2006 Series 6	2007 Series 1
Bond Balance	\$13.6 million	\$19.7 million	\$30.2 million	\$14.8 million	\$12.7 million
Bond Yield	4.59%	4.67%	4.90%	5.58%	4.53%

NIBP Indenture		
Bond Series	2009 B-3	2009 B-4
Bond Balance	\$58.1 million	\$67.8 million
Bond Yield	3.57%	3.48%

- b) Staff and its Independent Registered Municipal Advisor will determine the amount of refunding bonds to be issued and whether they are executed as one or more refunding transactions based upon market conditions. Florida Housing may also opt to sell a portion of the MBS backing such bonds and use the proceeds of such sale to optionally redeem the bonds should this be deemed more economically prudent.
- c) With regard to the issuance of new money bonds, conditions in the municipal bond market have improved significantly making the issuance of new money bonds feasible. Staff expects that it would be financially prudent to issue new money bonds under several separate series throughout 2016 to continue funding single family loans, including the potential to fund down payment assistance and closing cost assistance loans under its program.
- d) The investment banking team, bond counsels, independent registered municipal advisor and special counsels have been approved by the board pursuant a RFP/RFQ process. It is expected that the following professionals would participate in the issuances of the 2016 Phase One Bonds: (i) in alphabetical order Citigroup Global Markets Inc., Morgan Stanley & Co. LLC., Raymond James & Associates, Inc. and RBC Capital Markets LLC., will serve as senior and co-senior managing investment bankers for the bond sale; and (ii) Caine Mitter & Associates Incorporated will serve as the Independent Registered Municipal Advisor.
- e) The 2016 Phase One bonds will be issued under one of the following: the 1995 Master Indenture, the NIBP Indenture or a new master indenture but the aggregate amount of such 2016 Phase One Bonds shall not exceed \$450,000,000. The 2016 Phase One Bonds are expected to be rated “AA+” by Standard and Poor’s Rating Services, “AA1” by Moody’s Investors Service and “AA+” by Fitch Ratings if issued under the 1995 Master Indenture; provided, however, that only one rating is currently required under the 1995 Master Indenture and in consultation with the underwriting team and our Independent Registered Municipal Advisor, staff may opt to only obtain a single rating. The expected rating, if the bonds are issued under the NIBP Master Indenture or a new master indenture, is expected to be “Aaa” by Moody’s Investors Service. It

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is anticipated that the 2016 Phase One Bonds and any additional new money bonds issued will, for the foreseeable future, be secured by MBS.

- f) Authorization necessary to issue the 2016 Phase One Bonds requires (1) adoption of an authorizing resolution by Florida Housing's Board and (2) approval of fiscal determination by the State Board of Administration. To work within the constraints of regularly scheduled public meetings and maintain Florida Housing's goal of providing continuously available single family mortgage funding and to take full advantage of the current market conditions for the refunding, the authorizing resolution for the 2016 Phase One Bonds is being presented for consideration at Florida Housing's October 30, 2015 meeting.
- g) Staff will determine the timing of issuance, size of issuance and the most applicable documents for the issuance of each series of 2016 Phase One Bonds based upon prevailing market conditions and recommendations from the Independent Registered Municipal Advisor.
- h) To ensure sufficient time for obtaining required approvals for the 2016 Phase One Bonds, authorization is hereby requested to commit up to \$65 million of Indenture assets and/or other funds available to Florida Housing to provide interim funding for single family mortgage backed securities and down payment assistance and closing cost assistance loans. Additionally, Florida Housing may also use the line of credit secured with the Federal Home Loan Bank as previously approved by the Board.
- i) [Exhibit A](#): Board Resolution

3. **Recommendation**

Staff recommends the Board approve the necessary funding, staff actions and the Resolution to permit the issuance of the proposed 2016 Phase One Homeowner Mortgage Revenue Bonds.