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LEGAL

Action

I. LEGAL

A. Rule Development for Chapter 67-52, F.A.C.

1. Background/Present Situation:

- a) Staff is seeking authorization to begin the rule development process to update Ch. 67-52, Florida Administrative Code, which governs the Corporation Clerk.
- b) The proposed amendments are primarily technical and procedural and would update the rule to reflect current law and Corporation practices.

2. Recommendation:

- a) Staff recommends the Board authorize staff to proceed with the rule development process for Ch. 67-52, F.A.C., with proposed rule amendments to be presented to the Board for approval.

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B. Blue Tampa 2, LLC v. Florida Housing Finance Corporation and Modello Homes II, LLC; FHFC Case No. 2026-020BP; DOAH Case No. 26-2024BID

1. Background:

- a) This case concerns a protest filed against the preliminary awards for RFA 2026-103, Housing Credit and SAIL Financing to Develop Housing for Homeless Persons (the “RFA”). At the March 20, 2026, Board meeting, two applications were preliminarily recommended for funding, including Modello Homes II, LLC's application number 2026-330CSA (“Modello”). Blue Tampa 2, LLC’s (“Blue Tampa”) application number 2026-327CSA was deemed eligible but not initially selected for funding under the RFA’s funding selection process.
- b) Blue Tampa filed a timely Formal Written Protest and Petition for Administrative Hearing (the “Petition”) challenging Florida Housing’s preliminary funding determinations under the RFA. Florida Housing issued a Notice to Bidders informing all bidders that their substantial interests might be affected by the Petition, and Modello timely intervened. The Petition was referred to the Division of Administrative Hearings (“DOAH”) on April 17, 2026.

2. Present Situation:

- a) The Final Hearing was conducted via Zoom on May 18, 2026, before DOAH Administrative Law Judge Elizabeth W. McArthur (the “ALJ”). The issues heard at the Final Hearing included (i) whether Modello’s Development Location Point complied with the RFA’s requirements; and (ii) whether Blue Tampa’s Development Cost Pro Forma, including its housing credit request amount and housing credit equity letter, complied with the RFA’s eligibility requirements.
- b) On June 26, 2026, the ALJ issued a Recommended Order, a copy of which is attached as [Exhibit A](#). The ALJ found that Modello’s Development Location Point did not meet the RFA’s requirements and Modello was ineligible to receive funding. The ALJ also found that Blue Tampa’s Development Cost Pro Forma, housing credit request amount, and housing credit equity letter complied with the RFA’s requirements and that Blue Tampa remained eligible for funding.
- c) If the Board adopts staff’s recommendation, Modello will be deemed ineligible for funding, its preliminary award will be rescinded, and Blue Tampa would instead be selected for funding under the RFA’s sorting and selection process. Attached as [Exhibit B](#) is a spreadsheet showing the resulting awards.

3. Recommendation:

- a) Staff recommends the Board adopt the Recommended Order’s Findings of Fact and Conclusions of Law and issue a Final Order: (i) sustaining Blue Tampa’s protest; (ii) determining that Modello’s application is ineligible for funding; (iii) rescinding the preliminary award to Modello; (iv) determining that Blue Tampa’s application remains eligible for funding; and (v) and awarding funding to Blue Tampa as the next eligible applicant pursuant to the RFA’s sorting and selection process.

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C. **Correction and Supplement to the April 29, 2022, Board Meeting Minutes, Multifamily Programs Item E, 2022 Rule Development**

1. **Background:**

- a) At the April 29, 2022, Board meeting, the Board approved proposed rule amendments, including a new general contractor self-performance provision.

2. **Present Situation:**

- a) The certified meeting transcript confirms that staff also requested, and the Board approved, applying the new provision to developments already in the pipeline that were otherwise governed by prior rule versions. That action was not reflected in the written Board item or meeting minutes.

3. **Recommendation:**

- a) Staff recommends that the Board approve the following correction to the April 29, 2022, meeting minutes:

Ms. Button also asked the Board to authorize staff to apply the general contractor self-performance provision included in the proposed rules to developments already in the pipeline that were otherwise governed by prior rule versions.

MULTIFAMILY PROGRAMS - ALLOCATIONS

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II. MULTIFAMILY PROGRAMS - ALLOCATIONS

A. RFA 2026-105 Financing to Build Smaller Permanent Supportive Housing Properties for Persons with Developmental Disabilities

1. **Background:**

- a) On April 29, 2026, Florida Housing Finance Corporation (Florida Housing) issued RFA 2026-105 offering \$2,873,000 in grant funding for small Permanent Supportive Housing Developments for housing for Persons with Developmental Disabilities as defined in Section 393.063, Florida Statutes, consisting of no more than six units.
- b) The deadline for receipt of Applications was 3:00 p.m., Eastern Time, May 20, 2026.

2. **Present Situation:**

- a) Florida Housing received 6 Applications in response to this RFA. The Review Committee members, designated by the Chief Financial Officer, were Amanda DuSold, Multifamily Allocations Coordinator (Chair), Bryan Barber, Multifamily Programs Allocations Manager, Elaine Roberts, Policy Administrator, Nicole Singleton, Policy and Special Programs Manager, and Zach Summerlin, Policy Director. Each member of the Review Committee independently evaluated and scored their assigned portions of the submitted Applications, consulting with non-committee staff and legal counsel as necessary and appropriate.
- b) At its July 30, 2026, Review Committee meeting, the individual committee members presented their scores and the Committee carried out the funding selection process in accordance with Section Five, B. of the RFA. The individual scores are set forth on the RFA webpage and can be accessed here.
- c) The RFA 2026-105 All Applications chart (provided as Exhibit A) lists the eligible and ineligible Applications. The eligible Applications (i.e., Applications that met all criteria to be eligible to be considered for funding) and the ineligible Applications are listed in assigned Application Number order.
- d) The Review Committee considered the following motions:
 - (1) A motion for the Review Committee to approve the scoring results set out on [Exhibit A](#) and recommendations for funding as set out on [Exhibit B](#);
 - (2) A motion to recommend that the Board approve the scoring results set out on Exhibit A and recommendations for funding as set out on Exhibit B.
- e) The motions passed unanimously.

3. **Recommendation:**

- a) Approve the Committee's recommendations that the Board adopt the scoring results of the 6 Applications and authorize the tentative selection of the 2

MULTIFAMILY PROGRAMS - ALLOCATIONS

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Applications (set out on Exhibit B) for funding.

- b) If no notice of protest or formal written protest is filed in accordance with Section 120.57(3), Fla. Stat., et. al., staff will proceed to issue an invitation to enter credit underwriting to the Applications set out on [Exhibit B](#).
- c) If a notice of protest or formal written protest is filed in accordance with Section 120.57(3), Fla. Stat., et. al., then at the completion of all litigation for those Applicants impacted by litigation, staff will present all Recommended Orders for Board approval prior to issuing invitations to enter credit underwriting to those Applicants in the resulting funding range.
- d) There is no grant funding remaining.

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B. Allocation of Returned Funding in RFA 2025-205 SAIL Financing of Affordable Multifamily Housing Developments to be used in Conjunction with Tax-Exempt Bond Financing and 4% Housing Credits and RFA 2024-104 SAIL Financing for Farmworker and Commercial Fishing Worker Housing

1. Background:

a) RFA 2025-205:

- (1) RFA 2025-205 was issued on September 29, 2025. The Review Committee Meeting was held on November 20, 2025. On December 12, 2025, the Board approved the Preliminary Awards and the Ranked Waiting List.
- (2) Petitions were filed, the Recommended Order was approved by the Board on June 26, 2026, and invitations to enter credit underwriting were issued to awarded Applicants on July 1, 2026.
- (3) The Ranked Waiting List consisted of two eligible unfunded Applications: 2026-154BSA Bradley Gardens and 2026-075BSA Pinnacle at Tropical Crossings. Bradley Gardens was ultimately funded in this RFA per the Recommended Order and Pinnacle at Tropical Crossings applied and was funded under RFA 2025-203. Therefore, there are no Applications remaining on the Ranked Waiting List.

b) RFA 2024-104:

- (1) RFA 2024-104 was issued on May 16, 2024. The Review Committee Meeting was held on June 11, 2024. On June 28, 2024, the Board approved the Preliminary Awards.
- (2) No petitions were filed and invitations to enter credit underwriting were issued to awarded Applicants on July 8, 2024.

2. Present Situation:

- a) Application 2026-141BSA Autumn Palms North Port was awarded funding in RFA 2025-205 per the Recommended Order and was also awarded in RFA 2025-201. On July 6, 2026, the Applicant declined the invitation to enter credit underwriting for RFA 2025-205.
- b) The total returned SAIL funding from Autumn Palms North Port was \$3,949,700.
- c) Additionally, on July 27, 2026, both Applications awarded in RFA 2024-104 SAIL Financing for Farmworker and Commercial Fishing Worker Housing, returned their funding awards totaling \$7,710,268 combined.
- d) As there are no Applications remaining on the Ranked Waiting List for RFA 2025-205 and since the Ranked Waiting List was non-existent for RFA 2024-104, staff recommends the returned funding from both RFA 2025-205 and RFA 2024-104 be allocated to RFA 2026-205 SAIL Financing Of Affordable Multifamily Housing Developments To Be Used In Conjunction With Tax-Exempt Bond Financing And 4% Housing Credits.

MULTIFAMILY PROGRAMS - ALLOCATIONS

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3. **Recommendation:**

- a) Authorize the returned funding in RFA 2025-205 in the amount of \$3,949,700 and the returned funding in RFA 2024-104 in the amount of \$7,710,268 be allocated to RFA 2026-205, subject to the SAIL geographic (county size) and demographic (Family or Elderly) splits.

PREDEVELOPMENT LOAN PROGRAM (PLP)

Action

III. PREDEVELOPMENT LOAN PROGRAM (PLP)

A. 2026 Predevelopment Loan Program Rule Development

1. Background:

- a) Rule Chapter 67-38 governs the Predevelopment Loan Program.

2. Present Situation:

- a) Staff would like to begin the rule development process by scheduling a rule development workshop to solicit comments concerning Rule Chapters 67-38, Predevelopment Loan Program.
- b) Staff plans to hold a Rule Development Workshop in September 2026.
- c) Staff will also be developing an online application portal for all new applications.
- d) Due to the rule development process, beginning October 1, 2026, Florida Housing will suspend accepting new applications until the revised rule is adopted and in effect.

3. Recommendation:

- a) Authorize staff to proceed with the 2026 rule development process.

PROFESSIONAL SERVICES SELECTION (PSS)

Action

IV. PROFESSIONAL SERVICES SELECTION (PSS)

A. Rule Development for Chapter 67-49, F.A.C.

1. Background/Present Situation:

- a) Chapter 67-49, F.A.C., governs Florida Housing's procurement of commodities and contractual services.
- b) At the Board's request, staff proposes to initiate rule development to review and update Chapter 67-49, F.A.C., with particular attention to the provisions governing single source purchases and any other revisions necessary to maintain consistency with applicable law and current procurement requirements.

2. Recommendation:

- a) Staff recommends the Board authorize staff to proceed with the rule development process for Ch. 67-49, F.A.C., with proposed rule amendments to be presented to the Board for approval.

STATE HOUSING INITIATIVES PARTNERSHIP PROGRAM (SHIP)

Action

V. STATE HOUSING INITIATIVES PARTNERSHIP PROGRAM (SHIP)

A. 2026 Rule Development

1. Background:

- a) The State Housing Initiatives Partnership (SHIP) Program is governed by Rule Chapter 67-37.

2. Present Situation:

- a) Staff would like to begin the rule development process by scheduling a rule development workshop to solicit comments concerning Rule Chapters 67-37 State Housing Initiatives Partnership (SHIP) Program.
- b) Staff plans to hold a Rule Development Workshop in September 2026.

3. Recommendation:

- a) Authorize staff to proceed with the 2026 rule development process.

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

BLUE TAMPA 2, LLC,

Petitioner,

vs.

Case No. 26-2024BID

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent,

and

MODELLO HOMES II, LLC,

Intervenor.

_____ /

RECOMMENDED ORDER

The final evidentiary hearing was held in this case on May 18, 2026, before Elizabeth W. McArthur, Administrative Law Judge, Division of Administrative Hearings (DOAH), by Zoom.

APPEARANCES

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STATEMENT OF THE ISSUES

The issues for determination in this case are whether Respondent's initial decisions, determining that Intervenor's application was eligible and would be awarded funding under Request for Applications 2026-103 (the RFA), and that Petitioner's application was eligible but would not be awarded funding, were contrary to Respondent's governing statutes, rules, or solicitation specifications.

PRELIMINARY STATEMENT

On November 4, 2025, Respondent Florida Housing Finance Corporation (Florida Housing or Respondent) issued the RFA, soliciting applications for development proposals for housing for homeless households and persons with special needs, to compete for low-income housing tax credits, State Apartment Incentive Loan (SAIL) funding, and Home Investment Partnership funding through the American Rescue Plan Act (HOME-ARP).

On March 20, 2026, Florida Housing posted notice of its initial decisions. These included the determination that the application filed by Intervenor Modello Homes II, LLC (Modello or Intervenor), was eligible, the application filed by Petitioner Blue Tampa 2, LLC (Blue Tampa or Petitioner), was eligible, and that Modello (and not Blue Tampa) would be awarded funding.

Blue Tampa timely filed its Notice of Intent to Protest. On April 2, 2026, Blue Tampa timely filed its Formal Written Protest and Petition for

Administrative Hearing (Petition), disputing the initial determinations that Modello's application was eligible and should be selected for funding, and the initial determination to not fund Blue Tampa. On April 9, 2026, Modello filed its Notice of Appearance as Intervenor, as a specifically-named person whose substantial interests were being determined in this proceeding. Modello did not file its own notice of intent to protest or formal written protest. Another applicant, whose application was deemed eligible and who was awarded funding, was not challenged by any competing application.

On April 17, 2026, Florida Housing transmitted the Blue Tampa Petition and the Modello Notice of Appearance to DOAH for assignment of an Administrative Law Judge to conduct a chapter 120 evidentiary hearing.

Based on input of the parties at a scheduling conference held on April 20, 2026, the final hearing was set for May 18, 2026, by Zoom, and an Order of Pre-hearing Instructions was issued.

The parties filed their Joint Pre-hearing Stipulation on May 15, 2026, in which they stipulated to a number of facts that would not require evidentiary support. The stipulated facts are incorporated in the Findings of Fact below, to the extent relevant.

Also on May 15, 2026, a third party filed a Motion to Quash Subpoena Duces Tecum, directed to a subpoena duces tecum served on the third party by Modello, purporting to compel the third party to produce documents at the offices of counsel for Modello on the morning of May 18, 2026, the first day of hearing. The motion was addressed at the outset of the hearing and was resolved when counsel for Modello withdrew that subpoena, as well as another similar third-party subpoena.

Thereafter, the final hearing went forward as scheduled on May 18, 2026. The parties offered Joint Exhibits 1 through 8, which were admitted. Petitioner presented the final hearing testimony of Melissa Levy and Shawn Wilson. Petitioner's Exhibits 1, 2, 3 (except for pages 6 through 9), and 4 through 7, including the deposition testimony of Ryan Johnson, were admitted without objection.

Intervenor presented the final hearing testimony of Trent Claybaugh. Intervenor's Exhibits 1 through 5, 7, 10, 11, and 13, including deposition testimony of Shawn Wilson and Melissa Levy, were admitted without objection.

Florida Housing called no additional witnesses and offered no additional exhibits (besides the joint exhibits).

At the close of the final hearing, the parties were informed of the ten-day timeframe, running from when the final hearing transcript is filed at DOAH, for the parties to file their proposed recommended orders (PROs). The Transcript was filed on May 29, 2026. All parties timely filed their PROs, and they have been duly considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Based on the credibility of the witnesses who testified, the documentary evidence admitted at the hearing, and the parties' pre-hearing stipulations, the following Findings of Fact are made:

1. Respondent Florida Housing is a public corporation created pursuant to chapter 420, part V, Florida Statutes. It is the housing credit agency for Florida and is responsible for administering the allocation of low-income housing tax credits, SAIL funding, and HOME-ARP funding. Florida Housing

makes its allocations through a competitive solicitation process governed by Florida Administrative Code Chapters 67-48 and 67-60, and section 120.57(3), Florida Statutes. The competitive solicitation process commences with the issuance of a Request for Applications. A Request for Applications is equivalent to a "request for proposal." Fla. Admin. Code R. 67-60.009(4).

2. Pursuant to this process, Florida Housing issued the RFA on November 4, 2025, for which responses were due on or before 3:00 p.m. Eastern Time, on January 20, 2026 (the "Application Deadline"). No challenges were made to the RFA's terms or specifications.

3. Florida Housing received seven applications in response to the RFA. These included application number 2026-327CSA submitted by Blue Tampa for a new 100-unit mid-rise development named The Adderley 2, located in Hillsborough County, and application number 2026-330CSA submitted by Modello for a new 86-unit mid-rise development named Home @ Haven, also located in Hillsborough County.

4. A Review Committee was appointed to review the applications and make recommendations to Florida Housing's Board of Directors (the "Board"). The Review Committee reviewed all applications pursuant to the RFA's enumerated eligibility items and scoring, ranking and selection criteria. The Review Committee developed its recommendations as to whether applications were eligible or ineligible, and the scoring, ranking, and selection of applications for funding.

5. At its March 3, 2026 meeting, the Review Committee found three applications eligible (including Modello's and Blue Tampa's applications) and four applications ineligible for funding. Through the ranking and selection process outlined in the RFA, two applications were preliminarily recommended for funding. On March 20, 2026, the Board approved the Review Committee's eligibility and funding recommendations.

6. Florida Housing published notice of its decisions on March 20, 2026, announcing its preliminary determinations, including that Modello, Blue

Tampa, and one other applicant were eligible, and its intention that Modello and one other applicant (but not Blue Tampa) would be awarded funding.

7. Petitioner timely filed its Notice of Protest and Petition, protesting only the preliminary determinations of eligibility and award of funding to Modello. Modello timely filed its Notice of Appearance as an Intervenor, as a specifically named person whose substantial interests would be determined.

8. The sole issue protested by Petitioner's Petition is whether Modello's application should be deemed ineligible, because it did not satisfy the eligibility requirement to provide a Development Location Point (DLP). No challenge was made to the scoring of Modello's application.

9. The RFA requires a DLP as an eligibility item. The RFA states as follows: "Only Applications that meet all of the following Eligibility Items will be eligible for funding and considered for funding selection. ... Development Location Point provided."

10. The RFA elaborates on what is required for an applicant to satisfy the DLP eligibility item, as follows:

Provide a Development Location Point stated in decimal degrees, rounded to at least the sixth decimal place. If the proposed Development consists of Scattered Sites, as of Application Deadline the Development Location Point must affirmatively be established on the site with the most units, as outlined in subsection 67-48.002(34), F.A.C., and latitude and longitude coordinates for each Scattered Site must also be provided.

11. The phrase "Development Location Point" as used in the RFA is a defined term. Rule 67-48.002(34), referenced in the RFA, defines the term "Development Location Point" as:

a single point selected by the Applicant on the proposed Development site that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. For a Development which consists of Scattered Sites, this means a single point on the site with the most

units that is located within 100 feet of a residential building existing or to be constructed as part of the proposed Development. (emphasis added).

12. Melissa Levy, Florida Housing's Director of Multifamily Development, testified at the final hearing and was authorized to speak for Florida Housing. Her testimony regarding the DLP requirement was credible and persuasive, and is credited.

13. Ms. Levy confirmed that it is the applicant's responsibility to provide a DLP in its application that complies with the rule definition. It is an eligibility requirement, and an applicant's failure to provide a compliant DLP cannot be waived as a minor irregularity.

14. Florida Housing does not dictate what method or software tool applicants are to use to develop their DLP coordinates; the choice of methodology is left to the applicant, who bears responsibility for the accuracy of the information supplied. During its initial scoring process, Florida Housing does not independently verify the accuracy of DLP coordinates. Instead, as Ms. Levy explained, the reviewers take the information provided by the applicant at face value, reasonably relying on the applicant's certification that the application "meets all applicable requirements of the RFA" and the information in the application is "true, correct and complete."

15. In its application, Modello provided the following coordinates for its DLP:

Latitude in decimal degrees, rounded to at least the sixth decimal place: 28.032824

Longitude in decimal degrees, rounded to at least the sixth decimal place: -82.435107.

16. Trent Claybaugh, Modello's representative, testified that his team used a single "highly reputable software product" to develop what was believed to be an acceptable DLP. However, Modello did not take any additional steps to confirm that the coordinates identified a location point

that was on the development site and within 100 feet of a residential building, as required for a compliant DLP.

17. Blue Tampa's representative, Sean Wilson, testified that he and his team reviewed the coordinates in Modello's application using Google Earth, and got results indicating the Modello "DLP" was not compliant in that it was not located within the legal description for the development site provided by Modello in its application.¹

18. Blue Tampa then retained Ryan Johnson, a Florida licensed professional surveyor and mapper, to test the team's initial findings. Mr. Johnson offered expert testimony and documentary evidence by deposition in lieu of final hearing testimony. Mr. Johnson was provided with the legal description of the parcel for Modello's proposed development site, along with the latitude and longitude coordinates that Modello selected and put in its application for its DLP. Mr. Johnson was asked to determine the location of the point identified by Modello's coordinates, compared to the Modello development site.

¹ Given the competitive nature of this process, competing applicants routinely test the accuracy of the information in applications of the competitors selected for funding, and thereafter, those of the applications challenging funding decisions. For example, Mr. Claybaugh admitted that Modello's team tested the DLP coordinates provided by Blue Tampa in its application, but determined that Blue Tampa had provided coordinates for a compliant DLP. Notably, Modello did not say that it also tested the DLP coordinates provided by the other applicant found eligible and selected for funding, who was not challenged by anyone and is not a party to this case. In this proceeding, Modello lodges the argument that if it is deemed ineligible for a noncompliant DLP, then the undersigned should recommend that all bids be rejected, because Modello was singled out for verification of its DLP (in this proceeding) when Florida Housing did not verify the other applicants' DLPs. As set forth below in the Conclusions of Law, such a remedy would be inappropriate for several reasons, including serious notice/due process concerns with taking such an action when no one challenged the initial determinations as to the non-party applicant found eligible and approved for funding. But Modello failed to prove as a matter of fact that such a remedy would be warranted, by presenting evidence that the unchallenged applicant approved for funding had a noncompliant DLP. As a matter of fact, it is reasonable to infer that, upon learning its DLP was being challenged, Modello would have tested not only the DLP coordinates submitted by challenger Blue Tampa, but also, the DLP coordinates submitted by the other applicant approved for funding. Without evidence that the DLP coordinates of that other applicant were also noncompliant, Modello failed to make the case factually for rejection of all bids, even if that were an appropriate remedy procedurally.

19. Mr. Johnson testified that Modello's application provided coordinates for a point that was located 381 feet outside the boundary of Modello's proposed development site. Mr. Johnson provided a sworn Surveyor's Affidavit confirming this, along with a sketch, sealed with his professional seal, showing the location point identified by the Modello application coordinates compared to the Modello site.

20. Mr. Johnson's opinion testimony and supporting documentary evidence were credible and persuasive, and were not credibly rebutted. No competing expert testimony or documentary evidence was offered. The non-expert testimony offered by Modello's representative, Trent Claybaugh, questioning Mr. Johnson's professional opinions and methods, was neither credible nor persuasive. Indeed, Mr. Claybaugh admitted that he initially conceded the fact that it appeared the "DLP" in Modello's application was not on the proposed development site. His attempt to explain why he retreated from that concession was not persuasive. If he developed concerns about Mr. Johnson's professional opinions and methods, he could have retained an expert for Modello to offer contrasting opinions.

21. The greater weight of the evidence establishes that the "DLP" selected by Modello does not comply with the requirements for a DLP, in that it does not meet the requirements that the location point must be on the proposed development site *and* must be within 100 feet of an existing or proposed residential building. The application's coordinates are not on the proposed development site at all. From Mr. Johnson's credible opinion testimony and documentary evidence, the coordinates in the application are for a point located 381 feet away from the outer boundary of the development site. It is unknown whether the point identified by the application's coordinates would be even further away from a compliant DLP that is both on the development site and within 100 feet of an on-site residential building.

22. From the evidentiary hearing record, it is impossible to correct the error. The error does not involve a patent typographical error that can be

fixed with an obvious correction; instead, the latitude and longitude coordinates would have to be developed from extrinsic evidence for a compliant DLP that is both on the development site and within 100 feet of an on-site residential building.

23. Modello did not attempt to identify coordinates for a compliant DLP, as that would be an impermissible amendment to the application. Nor did Modello effectively contest the expert opinions offered by Blue Tampa's expert. But Modello argued that any error in providing a compliant DLP was, at most, a minor irregularity that should be waived. Modello pointed out that, unlike in some RFAs, its DLP was not used to award proximity points, so the DLP was not material and did not result in the award of any points. But what Modello could not argue is that providing a compliant DLP is not an eligibility requirement. It plainly is, and its omission cannot be waived as a minor irregularity.

24. As Ms. Levy credibly explained, a DLP is used not only for awarding proximity points when that is a part of an RFA, but also to enforce mandatory distance-separation requirements between funded developments in current *and future* RFA cycles. All such measurements begin with the DLP, and for the Modello proposed development, there is no DLP. It is a material omission.²

25. Modello also argued that providing a compliant DLP is unnecessary because the location of its proposed development site can be readily determined by looking elsewhere in its application. However, knowing the

² Modello argued in its PRO that a noncompliant DLP 381 feet away from the outer boundary of the development site would have "no effect on future projects" (Int. PRO at 23, ¶91), i.e., it would not have any effect on enforcement of mandatory distance-separation requirements for future RFA cycles. But whatever the separation requirement is—usually one or two miles, as Ms. Levy testified—starting the measurement from a point 381 feet away from the outer boundary of one side of the development site would mean a future proposed development on the other side of the development site could be closer to the development than allowed by the mandatory distance-separation requirement. A compliant DLP is the necessary starting point from which to measure, and thereby be able to enforce, the actual mandatory distance-separation requirement, not just something close to it.

location is different from knowing the DLP; the DLP provides different specific information for a defined point. The DLP requirement is a separate and distinct RFA requirement from those requiring applicants to provide the physical location of the proposed development site by identifying both the address and the county in which the project is located. In fact, each are separate eligibility requirements: providing the county, the address of the development site, *and* a DLP. Providing some eligibility items cannot excuse the failure to provide a different eligibility item. The RFA makes that clear: "Only Applications that meet *all* of the ... Eligibility Items will be eligible for funding and considered for funding selection." (emphasis added). Modello's argument is to dispense altogether with the requirement to provide a DLP, or to dispense with the DLP requirement in RFAs that do not include proximity points. But Modello did not challenge the RFA's specifications, and, thus, cannot lodge an argument to dispense with one of the RFA's eligibility requirements.

26. Although Modello did not file its own formal written protest or cross-petition of any kind, Modello took the position that Blue Tampa's application should be deemed ineligible. Further, Modello argued that Blue Tampa is required to prove its eligibility as an element of proving its standing to protest the preliminary determinations regarding Modello's application.

27. Modello's challenge to Blue Tampa's eligibility raised an issue regarding Blue Tampa's Cost Pro Forma, which was addressed by all parties during the hearing.

28. The eligibility requirement in this regard is set forth as follows in the RFA: "Only Applications that meet all of the following Eligibility Items will be eligible for funding and considered for funding selection. ... Development Cost Pro Forma provided *reflecting that sources equal or exceed uses*." (emphasis added).

29. The RFA provides the following details for this requirement:

All Applicants must complete the Development Cost Pro Forma *listing the anticipated costs*, the Detail/Explanation Sheet, if applicable, and the Construction or Rehab Analysis and Permanent Analysis *listing the anticipated sources* (both Corporation and non-Corporation funding). *The sources must equal or exceed the uses*. If a funding source is not considered, if the Applicant's funding Request Amount is adjusted downward, and/or if the anticipated costs or uses are adjusted upward, this may result in a funding shortfall. If the Application has a funding shortfall in either the Construction/Rehab and/or the Permanent Analysis of the Applicant's Development Cost Pro Forma, the amount of the adjustment(s), to the extent needed and possible, will be offset by increasing the deferred Developer Fee up to the maximum eligible amount as provided below. If it is demonstrated that an Applicant failed to disclose anticipated costs, the Applicant will be deemed ineligible if those undisclosed costs cause a funding shortfall.

The Development Cost Pro Forma must include all anticipated costs of the Development construction, rehabilitation and, if applicable, acquisition, including the Developer Fee and General Contractor fee, as outlined below. Waived or reimbursed fees or charges are not considered costs to the Development and therefore, should not be included on the Development Cost Pro Forma. Note: deferred Developer Fees are not considered "waived fees." (emphasis added).

30. Housing credit equity is one source that an applicant may rely on within its development cost pro forma. With regard to the applicant's housing credit request amount, the RFA states:

(i) State the amount of Housing Credits being requested.

The Eligible Housing Credit Request Amount will be based on the lesser of (A) the Applicant's Housing

Credit Request Amount and (B) the Maximum Housing Credit Request Limit (as outlined below). If the Applicant states an amount that is greater than the amount the Applicant is eligible to request, the Corporation will reduce the amount down to the maximum amount the Applicant is eligible to request ("Eligible Housing Credit Request Amount").

(ii) Maximum Housing Credit Request Chart

The Housing Credit Request Amount cannot exceed the applicable County Category amount stated in the following chart:

County Category	Eligible Housing Credit Request Limit
Medium County	\$2,800,000
Large County	\$3,300,000

31. For funding sources besides Florida Housing that are included within a development cost pro forma, the RFA requires that the applicant provide backup documentation or a financing proposal. This includes equity received from the syndication of housing credits.

32. With regard to housing credit equity proposals, the RFA states:

A Housing Credit equity proposal must be provided as Attachment 8. For purposes of this RFA, to be counted as a source, an equity proposal, regardless of whether the documentation is in the form of a commitment, proposal, term sheet or letter of intent, must meet the requirements set out below:

(i) If the Eligible Housing Credit Request Amount is less than the anticipated amount of credit allocation stated in the equity proposal, the equity proposal will be considered a source of financing and, the maximum amount of Housing Credit equity to be permitted in the Development Cost Pro Forma will be adjusted downward from the amount stated in the equity proposal. This adjusted maximum

Housing Credit equity will be calculated by taking the total amount of equity to be provided to the proposed Development as stated in the equity proposal letter, dividing it by the credit allocation stated in the equity proposal and multiplying that quotient by the Applicant's Eligible Housing Credit Request Amount. If the Eligible Housing Credit Request Amount is greater than the anticipated amount of credit allocation stated in the equity proposal, the equity proposal will be considered a source of financing and the maximum amount of Housing Credit equity to be permitted in the Development Cost Pro Forma will be the amount stated in the equity proposal.

33. In other words, the housing credit equity proposal must be attached to the application for the credit equity to be included as a source in the applicant's development cost pro forma, and the amount of credit equity will only be subject to adjustment if the eligible housing credit request amount is less than the anticipated amount of credit allocation *stated in the equity proposal*.

34. As part of its application, Blue Tampa submitted a Development Cost Pro Forma (pro forma). The pro forma identified \$18,730,200 in anticipated new construction activity costs. However, Blue Tampa admitted that it mistakenly put the new construction costs in the wrong sub-category column—column 2 for "HC [Housing Credit] Ineligible Costs," instead of column 1 for "HC Eligible Costs." Column 3, Total Costs, accurately shows the anticipated new construction costs of \$18,730,200. The anticipated new construction costs are fully disclosed, just misplaced in the wrong sub-category on the form.

35. The construction/rehab analysis in Blue Tampa's pro forma includes \$4,207,079 in housing credit equity proceeds and shows total construction sources equal total development costs. The permanent analysis in Blue Tampa's pro forma includes \$28,047,195 in housing credit equity proceeds and shows total permanent funding sources equal total development costs.

36. Blue Tampa's proposed development is in Hillsborough County, which is designated by the RFA as a "large county." Accordingly, the RFA provides that Blue Tampa's maximum housing credit request limit is \$3,300,000. Blue Tampa's housing credit request amount was \$3,300,000. Its request amount did not exceed the request limit, and therefore, under the terms of the RFA, is not subject to a downward adjustment.

37. As Attachment 8 to its application, Blue Tampa included a credit equity proposal from Raymond James. The Raymond James credit equity proposal states that, based on Blue Tampa receiving an anticipated \$3,300,000 housing credit allocation, Raymond James will fund \$4,207,079 in housing credit equity proceeds to be paid prior to construction completion, and \$28,047,195 in housing credit equity proceeds to be paid in total.

38. Blue Tampa's pro forma meets the RFA's eligibility requirements for development cost pro formas. It lists all anticipated costs and all anticipated funding sources, and reflects that the anticipated funding sources meet or exceed the anticipated uses/costs.

39. With regard to Blue Tampa's mistake placing the new construction costs in the wrong sub-category column, Ms. Levy persuasively testified that the sub-categories breaking down anticipated costs into HC eligible and HC ineligible are not eligibility requirements and are not scored items. The sub-categories do not serve any purpose at this stage of a development proposal. Instead, the breakdown of costs into sub-categories becomes germane during credit underwriting, when all of the costs and sub-categories of costs are considered de novo, based on information received before, during, and after the competitive solicitation process, and separately analyzed for reasonableness by credit underwriters.³

³ Rule 67-48.0072, governing credit underwriting, provides: "Credit underwriting is a de novo review of all information supplied, received or discovered during or after any competitive solicitation scoring and funding preference process Corporation funding will be based on appraisals of comparable developments, cost benefit analysis, and other documents evidencing justification of costs."

40. Ms. Levy cogently explained that HC eligible versus ineligible costs are addressed de novo in the credit underwriting process as part of the independent analysis by credit underwriters to determine how much in tax credits can be awarded. This is not a matter within a developer's discretion; whether particular development costs are eligible or ineligible is dictated by the Internal Revenue Code. Ms. Levy, who was the tax credit director for credit underwriting at Florida Housing before she became director of the multifamily program, explained:

So there is, through the credit underwriting process and through what we call a cost certification process, determination of how much credits the development is eligible for. So, if the development cost is eligible, it would be eligible to receive tax credits, which is based on a mathematical calculation. And so the, the eligible cost[s] are the total cost[s] to the development that would be eligible for that calculation, which in the end is one test, one of three tests, that will determine how much the project, at the end of the day, will be eligible to be allocated. ... Under the housing credit program, there are cost[s] that are not eligible to be included in that calculation that will determine how much tax credits the development will ultimately be eligible for. So, *costs like land, cost associated with actually obtaining the tax credits, those types of things are ineligible under Section 42 of the Internal Revenue Code*, which is what governs the housing credit program, so they would be excluded from the calculation in how much housing credits ultimately will be allocated to the development. (Tr. 51-52, emphasis added).

41. The evidence shows that Blue Tampa disclosed all anticipated costs, including all anticipated new construction costs, on its pro forma. There is no evidence to the contrary. Modello does not argue, and offered no evidence to prove, that Blue Tampa's pro forma fails to disclose all of its anticipated

costs, including the anticipated new construction costs.⁴ Instead, Modello's argument is that Blue Tampa should be stuck with its mischaracterization of new construction costs as ineligible to go into the calculation for tax credits down the road in the credit underwriting process. Modello advances the mischaracterization to the extreme end point of saying Blue Tampa would have a funding shortfall by excluding the mischaracterized new construction costs, because treating them as ineligible (even though the Internal Revenue Code would treat them as eligible) would mean Blue Tampa would only be eligible for a lower amount of tax credits, so Florida Housing should go ahead and reduce the requested housing credit amount now. Modello's argument cannot be squared with the RFA, which only requires disclosure of all anticipated costs, and then a comparison with funding sources to determine that the funding sources meet or exceed the anticipated costs. Blue Tampa meets the RFA test.

42. Ms. Levy voiced her persuasive disagreement with Modello's argument that because Blue Tampa mistakenly put its anticipated new construction costs in the HC ineligible column instead of the HC eligible column, Florida Housing could, and should, reduce Blue Tampa's housing credit request amount. Instead, she pointed to the only permissible reason in the RFA for reducing an applicant's housing credit request amount, which is that the applicant requested an amount exceeding the maximum allowable credit authorized for the county size where the project is located. The Blue Tampa project is in Hillsborough County, for which the requested funding amount, \$3,300,000, is the authorized amount. The RFA does not permit a reduction of Blue Tampa's requested housing credit amount because the requested

⁴ Modello's PRO strained to suggest Blue Tampa did not disclose all of its anticipated costs by instead pointing out that Blue Tampa "did not include all anticipated costs in the Housing Credit Eligible Cost column of its Development Cost Pro forma." (Int. PRO at 8, ¶25). But Modello offered no proof that the new construction cost number misplaced in the HC Ineligible column did not accurately reflect all the anticipated new construction costs. The RFA simply does not require disclosure of all anticipated costs *plus* proper sub-categorization of those costs as HC eligible or HC ineligible.

amount did not exceed the maximum allowable credit authorized for Hillsborough County.

43. The evidence shows that Blue Tampa listed its funding sources and provided appropriate documentation of an equity funding proposal by Raymond James. No evidence was offered to show that that funding source should not be considered, such as if Raymond James has taken back its commitment.

44. Although Modello was permitted at the hearing to make its record by going through a calculation that arguably would carry Blue Tampa's mischaracterization of eligible versus ineligible new construction costs out to the extreme, the undersigned now finds that the calculation is inappropriate under the RFA. As argued by Florida Housing and Blue Tampa, Modello is inappropriately injecting something that belongs in the credit underwriting process. If Blue Tampa's project goes to credit underwriting, there will be a *de novo* review and analysis of all costs, based on information in the application *and* information developed *after* the application, and based on an independent determination of housing credit eligible and ineligible costs as dictated by the Internal Revenue Code.

45. Ms. Levy cogently explained the adjustments and calculations that Modello argues for are impermissible under the RFA. Instead, she affirmed her view that the Blue Tampa pro forma meets the requirements of the RFA and she would not reverse the initial determination of eligibility. She also confirmed that if the Blue Tampa eligibility is sustained and Blue Tampa prevails in its challenge to Modello's eligibility, then Blue Tampa would be the next eligible unfunded application.

Ultimate Findings of Fact

46. Modello's application is ineligible for funding, because Modello did not provide a DLP as defined in the RFA specifications and Florida Housing's rule. Modello's failure to provide a compliant DLP is a material omission that cannot be corrected from any other information in the application, and cannot

be considered a waivable minor irregularity. The preliminary determination of eligibility, made without the benefit of formal discovery and an evidentiary hearing record, is contrary to Florida Housing's governing rule and the solicitation specifications, and is clearly erroneous.

47. Blue Tampa's application is eligible for funding. Blue Tampa's pro forma meets the RFA's eligibility test of showing that the anticipated funding sources equal or exceed anticipated uses/costs. The greater weight of the evidence does not establish permissible grounds, according to the RFA specifications, to make adjustments to manufacture a funding shortfall, as argued by Modello. The greater weight of the evidence establishes that Florida Housing's initial determination that Blue Tampa is eligible for funding is not contrary to Florida Housing's rules or the RFA specifications, and is not clearly erroneous, contrary to competition, arbitrary, or capricious.

CONCLUSIONS OF LAW

48. DOAH has jurisdiction over the subject matter of, and the parties to, this competitive procurement protest pursuant to sections 120.569, 120.57(1), and 120.57(3) and rule 67-60.009(2).

49. Blue Tampa challenges Florida Housing's initial determination that Modello's application meets the eligibility requirements set forth in the RFA, as a precursor to selecting Modello for an award of funding under the RFA. Pursuant to section 120.57(3)(f), the burden of proof is on Blue Tampa, as the party protesting the proposed agency action, as to the matters raised in its Petition. *State Contracting & Eng'g Corp. v. Dep't of Transp.*, 709 So. 2d 607, 609 (Fla. 1st DCA 1998). This includes its allegations that it has standing.

50. Although Modello did not file a formal written protest, it has raised a cross-protest issue in this proceeding, which was fully litigated. Modello challenges Florida Housing's determination that Blue Tampa meets the eligibility requirements set forth in the RFA. To the extent Modello is the

proponent of the affirmative of this issue, it bears the burden of proof as the party protesting that proposed agency action.⁵

51. Section 120.57(3)(f) provides that in a competitive procurement protest:

[N]o submissions made after the bid or proposal opening which amend or supplement the bid or proposal shall be considered. ... [T]he administrative law judge shall conduct a de novo proceeding to determine whether the agency's proposed action is contrary to the agency's governing statutes, the agency's rules or policies, or the solicitation specifications. The standard of proof for such proceedings shall be whether the proposed agency action was clearly erroneous, contrary to competition, arbitrary, or capricious.

52. The phrase "de novo proceeding" as used in section 120.57(3)(f) describes a form of intra-agency review. The purpose of the ALJ's review is to "evaluate the action taken by the agency." *J.D. v. Fla. Dep't of Child. & Fams.*, 114 So. 3d 1127, 1132 (Fla. 1st DCA 2013); and *State Contracting*, 709 So. 2d at 609. A de novo proceeding "simply means that there was an evidentiary hearing ... for administrative review purposes" and does not mean that the ALJ "sits as a substitute for the [agency] and makes a determination whether to award the bid de novo." *J.D.*, 114 So. 3d at 1133; *Intercontinental Props., Inc. v. Dep't of Health & Rehab. Servs.*, 606 So. 2d 380, 386 (Fla. 3d DCA 1992).

53. The challengers must prove by a preponderance of the evidence that Florida Housing's proposed actions are either: (a) contrary to its governing statutes; (b) contrary to its rules or policies; or (c) contrary to the RFA

⁵ Clouding this issue is the fact that Blue Tampa has the burden of not only pleading, but proving, its standing. For Blue Tampa to have standing to protest the proposed agency action with respect to Modello, it must not only allege, but prove that it would be entitled to funding if it were to succeed in its challenge to Modello's eligibility. As determined below, the burden of proof issue does not make a difference here, whether Blue Tampa's eligibility for funding is viewed as Blue Tampa's burden of proving it has standing, or Modello's burden of proving its challenge to proposed agency action.

specifications. The standard of proof is whether Florida Housing's challenged actions are either: (a) clearly erroneous; (b) contrary to competition; or (c) arbitrary or capricious. §§ 120.57(1)(j) and 120.57(3)(f), Fla. Stat.

54. The "clearly erroneous" standard has been defined to mean "the interpretation will be upheld if the agency's construction falls within the permissible range of interpretations." *Colbert v. Dep't of Health*, 890 So. 2d 1165, 1166 (Fla. 1st DCA 2004); *see also Holland v. Gross*, 89 So. 2d 255, 258 (Fla. 1956) (when a finding of fact by the trial court "is without support of any substantial evidence, is clearly against the weight of the evidence or ... the trial court has misapplied the law to the established facts, then the decision is 'clearly erroneous.'" However, if "the agency's interpretation conflicts with the plain and ordinary intent of the law, judicial deference need not be given to it." *Colbert*, 809 So. 2d at 1166.

55. An agency action is "contrary to competition" if it unreasonably interferes with the purpose of competitive procurement. As described in *Wester v. Belote*, 138 So. 721, 722 (Fla. 1931):

The object and purpose [of the bidding process] ... is to protect the public against collusive contracts; to secure fair competition upon equal terms to all bidders; to remove not only collusion, but temptation for collusion and opportunity for gain at public expense; to close all avenues of favoritism and fraud in its various forms; to secure the best values at the lowest possible expense; and to afford an equal advantage to all desiring to do business with the public authorities, by affording an opportunity for an exact comparison of bids.

56. In other words, the "contrary to competition" test forbids agency actions that: (a) create the appearance and opportunity for favoritism; (b) reduce public confidence that contracts are awarded equitably and economically; (c) cause the procurement process to be genuinely unfair or unreasonably exclusive; or (d) are abuses, i.e., dishonest fraudulent, illegal,

or unethical. See § 287.001, Fla. Stat.; and *Harry Pepper & Assoc., Inc. v. City of Cape Coral*, 352 So. 2d 1190, 1192 (Fla. 2d DCA 1977).

57. Finally, section 120.57(3)(f) requires agency action to be set aside if it is "arbitrary or capricious." An "arbitrary" decision is one that is "not supported by facts or logic," or is "despotic." *Agrico Chemical Co. v. Dep't of Env'tl. Reg.*, 365 So. 2d 759, 763 (Fla. 1st DCA 1978). A "capricious" action is one which is "taken without thought or reason or irrationally." *Id.*

58. The determination of whether an agency has acted in an arbitrary or capricious matter is based on "whether the agency: (1) has considered all relevant factors; (2) has given actual, good faith consideration to those factors; and (3) has used reason rather than whim to progress from consideration of these factors to its final decision." *Adam Smith Enter. v. Dep't of Env'tl. Reg.*, 553 So. 2d 1260, 1273 (Fla. 1st DCA 1989). The standard has also been formulated by the court in *Dravo Basic Materials Co. v. Department of Transportation*, 602 So. 2d 632, 634 n.3 (Fla. 2d DCA 1992), as follows: "If an administrative decision is justifiable under any analysis that a reasonable person would use to reach a decision of similar importance, it would seem that the decision is neither arbitrary nor capricious."

59. One of Florida Housing's rules adopted pursuant to its rulemaking authority under section 420.507(12) to administer the competitive solicitation process provides as follows:

The failure of an Applicant to supply required information in connection with any competitive solicitation pursuant to this rule chapter shall be grounds for a determination of nonresponsiveness with respect to its Application. If a determination of nonresponsiveness is made by [Florida Housing], the Application shall be considered ineligible.

Fla. Admin. Code R. 67-60.006(1).

60. Rule 67-60.008 provides Florida Housing with the discretion to waive certain errors as minor irregularities. The rule provides:

Minor irregularities are those irregularities in an Application, such as computation, typographical, or other errors, that do not result in the omission of any material information; do not create uncertainty that the terms and requirements of the competitive solicitation have been met; do not provide a competitive advantage or benefit not enjoyed by other Applicants; and do not adversely impact the interests of the Corporation or the public. Minor irregularities may be waived or corrected by the Corporation.

61. Florida Housing is required to follow its own stated policy and prior practice, unless deviation therefrom is adequately explained. § 120.68(7)(e), Fla. Stat. "An agency's failure to follow its own precedent which contains similar facts is contrary to established administrative principles and sound public policy." *Villa Capri Assoc. v. Fla. Hous. Fin. Corp.*, 23 So. 3d 795, 798 (Fla. 1st DCA 2009). Florida Housing is "required to interpret the RFA consistently with its plain and unambiguous language," and "may not adopt implausible or unreasonable interpretations of an RFA." *Heritage Oaks, LLP v. Madison Pointe, LLC*, 277 So. 3d 215, 218 (Fla. 1st DCA 2019).

Modello's DLP

62. Based on the Findings of Fact and Ultimate Findings of Fact above, Florida Housing's preliminary determination that Modello is eligible for funding, as a precursor to its selection of Modello's application for funding, is contrary to Florida Housing's rules and the solicitation specifications, is clearly erroneous, and cannot be sustained. Notably, Florida Housing agrees that its preliminary decision cannot be sustained, based on the evidence developed in discovery and presented in this de novo protest proceeding.

63. The greater weight of the evidence, and the only expert evidence on the subject, proved that the coordinates set forth in Modello's application, certified by the applicant to be true and correct coordinates for a "DLP" as defined in the RFA and in Florida Housing's rule definition, did not provide a

DLP. Instead, the coordinates identified a point that was not located on Modello's proposed development site.

64. The clear and unambiguous language of the RFA regarding eligibility items requires applicants to provide *all* of the listed eligibility items in order to be eligible for funding. One such requirement is to provide a DLP as that term is defined in rule 67-48.002(34). Modello did not provide a DLP. According to the RFA, Modello cannot be eligible for funding.

65. Administrative Law Judge John Van Laningham very recently addressed a similar DLP issue in *Autumn Palms North Port, Ltd. v. Florida Housing Finance Corporation and Zephyrhills JSGL Housing Partners, LP*, Case No. 26-1168BID (Fla. DOAH May 13, 2026). There, an applicant preliminarily found to be eligible and selected for funding was deemed ineligible by Recommended Order in a section 120.57(3)(f) proceeding. The parties stipulated that the coordinates in the application identified a point 41 feet outside of the proposed development site. The applicant argued that the DLP discrepancy should be excused as a minor irregularity because the coordinates were generated by a publicly available mapping tool, the error was unintentional, other information about the site was correct, and the discrepancy did not yield a competitive advantage because a correct DLP would not have reduced the applicant's proximity score and might have increased the score by one-half point.

66. Judge Van Laningham rejected those arguments. As he pointed out, "the asserted absence of a competitive scoring advantage does not cure noncompliance: the defect here is the failure to provide the required on-site DLP, not a miscalculation of downstream points. Even if a corrected on-site DLP would have yielded the same or greater proximity points, *the defect remains material because the RFA requires the DLP to be located on the proposed development site.*" *Autumn Palms*, RO at 15, ¶42 (emphasis added).

67. Just as the applicant with the non-compliant DLP did in *Autumn Palms*, Modello relies heavily on the so-called "India" or "dash" case, *HTG*

Osprey Pointe, LLC v. Florida Housing Finance Corporation, Case No. 18-0479BID (Fla. DOAH April 19, 2018; FHFC May 4, 2018). Modello argues that *Osprey Pointe* should be viewed as precedent, allegedly involving similar facts, which should dictate a conclusion that Modello's DLP error is a minor irregularity that should be waived. As Judge Van Laningham explained well in *Autumn Palms*, *Osprey Point* is distinguishable on the key points related to the claim of minor irregularity.

68. In *Osprey Point*, an applicant provided coordinates that were numerically correct through the sixth decimal place, but omitted the prefix of a minus sign before the longitude coordinate. This omission caused the coordinates to identify a point in India, rather than in Miami where the proposed development was located. The omission was patent, and Florida Housing waived the omission as a correctable mistake. By imputing the missing minus sign, the numerically correct coordinates identified a compliant DLP as defined by Florida Housing's rule, i.e., that was on the proposed development site and within 100 feet of a residential building.

69. As Judge Van Laningham pointed out, the *Osprey Pointe* Final Order makes clear that Florida Housing's minor irregularity rule reaches mistakes *clearly evident on the face of the application*, such as computation and typographical errors. There, both the existence of the typographical error *and* the necessary correction (a longitude coordinate with a minus sign prefix) were apparent from the four corners of the application. But in *Autumn Palms*, just as in this case, nothing on the face of the applications at issue reveal either that the coordinates are erroneous or what the "correct" on-site point should be. Just as in *Autumn Palms*, the DLP error was discoverable only through outside investigation—Blue Tampa's work and Mr. Johnson's special-purpose survey. As Judge Van Laningham appropriately concluded, this is "the opposite of a face-of-the-application mistake." *Autumn Palms*, RO at 16, ¶43.

70. The *Autumn Palms* Recommended Order is the most recent, but certainly not the first DLP-related determination of its kind. It is consistent with Florida Housing precedent in similar cases. *See, e.g., Quail Roost Transit Village I, Ltd., v. Fla. Hous. Fin. Corp.*, Case No. 20-3094BID (Fla. DOAH Sept. 23, 2020; FHFC Oct. 16, 2020) (DLP eligibility requirement was not met, where evidence in discovery and at hearing proved that the coordinates in application produced noncompliant points for scattered sites that were 35, 73, and 75 feet away from the sites. Judge Lawrence Stevenson determined that the failure to meet the DLP eligibility requirement meant the application was ineligible, as Florida Housing came to agree based on the evidence in the bid protest hearing. Further, the defect could not be deemed a minor irregularity, as argued, based on how close the points were to the site, because compliant DLPs were required by the RFA and those could not be determined without extrinsic evidence, which would be an impermissible application amendment prohibited by section 120.57(3)(f)). The only instance shown in which a DLP-related error was deemed corrected as a minor irregularity was in *Osprey Pointe*, when a minus sign was imputed to correct a patent typographical omission and a correct DLP was thereby provided without amending the application.

71. In language equally apt to Modello's arguments, the Recommended Order in *Autumn Palms* also pointed out:

Intervenor's ancillary points do not change the analysis. The speculation that other preliminarily funded applications might also contain DLP inaccuracies is unsupported by record evidence and is in any event immaterial to whether *this* application satisfies the RFA. ... Allowing post-deadline relocation of an off-site DLP would not waive a typographical error of the kind the rule contemplates; it would supply, after the deadline, material information that the application required.
...

It is therefore concluded that Intervenor failed to supply a DLP that meets the RFA and the rule. The defect is not a correctable minor irregularity. FHFC's intended action deeming the application eligible despite the off-site DLP was contrary to the solicitation specifications and the governing rule.

Autumn Palms, RO at 17, ¶¶45, 46.

72. Just as in *Autumn Palms* and prior Florida Housing precedent, Modello failed to supply a DLP that meets the RFA and the rule, and that defect is not a correctable minor irregularity where a compliant DLP cannot be gleaned from the submitted application, but would have to be provided by extrinsic evidence that would be an impermissible application amendment. And just as in *Autumn Palms*, Modello's speculation that the only other preliminarily funded application might also contain a noncompliant DLP is unsupported by record evidence.

73. Modello's argument that all bids should be rejected must itself be rejected. Blue Tampa properly and timely availed itself of the procedural option to file a notice of intent to protest followed by its Petition. Modello has not proven that Florida Housing did not treat all applicants the same in its initial review. Instead, Modello was the object of a timely Petition, in which Modello's application was properly subjected to scrutiny in pre-hearing discovery and in the formal evidentiary hearing. Modello did not file its own formal written protest. Modello could have, but did not, attempt to provide evidence that the other preliminarily funded application also had a defective DLP.

74. Modello's argument that it is unfair to subject its application to scrutiny in this formal evidentiary proceeding, when the same level of scrutiny was not applied by Florida Housing in its initial review of the applications, is an argument against the procedural rights afforded by section 120.57(3). The purpose of a bid protest hearing is to "provide a formal evidentiary record upon which to base final agency action. Following a

challenge to an agency's decision to accept a proposal, the agency's final decision must be supported by the evidence adduced at hearing, including evidence unavailable to the agency earlier." *WHFT LL Workforce, Ltd. v. Fla. Hous. Fin. Corp.*, Case No. 25-1110BID (Fla. DOAH May 9, 2025; FHFC June 13, 2025), RO at 28, ¶ 101 (citing *Gtech Corp v. Dep't of Lottery*, 737 So. 2d 615, 619 (Fla. 1st DCA 1999), and *Pinnacle Rio, LLC v. Fla. Hous. Fin. Corp.*, Case No. 14-1398BID, RO at ¶111 (Fla. DOAH June 4, 2014; FHFC June 13, 2014)).

75. Modello cites *Bright House Networks v. AT&T Corporation*, 205 So. 3d 837 (Fla. 5th DCA 2016), for the proposition that an Administrative Law Judge may *sua sponte* reject all bids in a proceeding under section 120.57(3), even if no petitioner seeks such relief. The undersigned declines the invitation. *Bright House* is inapposite. There, a school district allowed shortlisted bidders to make material amendments to their proposals after the sealed bids were open, something not alleged to have happened here (even though Modello seems to be arguing its application can be amended to supply the missing compliant DLP). The court pointed out that the ALJ found "the flaw was in the bidding process itself, specifically that section 120.57, Florida Statutes (2015), does not permit a school board to allow bidders to change their bids after submission." *Id.* at 839. Based on that finding, the ALJ recommended that the school board reject all proposals and rebid the project. The school board rejected that recommendation in its final order, but the appellate court agreed with the ALJ, reversed, and remanded with instructions that the school district "rebid the contract using a new RFP consistent with Florida Law." *Bright House*, 205 So. 3d at 839-840.

76. Unlike in *Bright House*, no evidence was presented in this case that the competitive solicitation process itself *leading up to Florida Housing's initial determinations* was flawed, unfair, or contrary to requirements in any statute, rule, or the RFA. Instead, here, Modello is complaining only that it was forced to defend the initial determinations with actual evidence when

Blue Tampa exercised its statutory right to file its Petition, giving rise to this administrative proceeding. Moreover, in *Bright House*, the only parties who would be substantially affected by rejecting all bids were parties in the administrative proceeding and in the appeal. *Bright House* is not only distinguishable on the facts, but, relevant here, the court also noted that the intended initial awardee waived its right to present independent arguments regarding the School Board's RFP process by failing to file a timely challenge of its own. *Bright House*, 205 So. 3d at 840 n.2.

77. In this case, Modello has not offered any legal support that would permit it to inject a new claim and a new request for relief not properly pled in a timely filed formal written protest. Modello joined this proceeding via a Notice of Appearance, as a specifically named person, pursuant to Florida Administrative Code Rule 28-106.205(3). That procedural mechanism allows Modello to participate as Intervenor because it is named as the object of Blue Tampa's Petition. Modello did not thereby gain a new window to raise its own issues to challenge other preliminary decisions not challenged by Blue Tampa's Petition or to inject new issues not raised by the Petition. Allowing Modello to do so would give rise to serious notice/due process concerns for the other awarded applicant under this RFA, who is not a party to this proceeding, whose award was not subject to any timely protest, and who was not put on notice by Blue Tampa's timely filed Petition that this proceeding could be used as a springboard to allow Modello to lodge a challenge undermining the non-party's award when that was never raised in the only timely filed Petition.

78. Modello has failed to establish either a factual basis or a legal basis for a rejection of all bids.

Blue Tampa's Pro Forma

79. Modello's challenge to Blue Tampa's pro forma is, in essence, a challenge to Blue Tampa's standing. It is undisputed that, if Blue Tampa prevails in its challenge to Modello's eligibility and if Blue Tampa's own

application is eligible for funding, then Blue Tampa would be the next eligible application entitled to funding. Modello, therefore, disputes Blue Tampa's eligibility determination.

80. Based on the Findings of Fact and Ultimate Findings of Fact above, Blue Tampa's pro forma satisfies the RFA's eligibility requirement. Its pro forma included all anticipated development costs and all anticipated funding sources required by the RFA, and its pro forma showed that its anticipated sources equaled or exceeded its anticipated uses or costs. The preliminary determination that Blue Tampa's application is eligible for funding was not contrary to statutes, rules, or the solicitation specifications, and was not clearly erroneous, contrary to competition, arbitrary, or capricious.

81. Modello seized on the fact that Blue Tampa placed its anticipated new construction costs in the HC Ineligible Costs column rather than the HC Eligible Costs column on the pro forma. Ms. Levy persuasively explained why the admitted mistake has no bearing on the eligibility determination, and why the Blue Tampa pro forma meets the requirements of the RFA. But Modello attempted to recast the pro forma to make adjustments not permitted by the RFA, so as to manufacture an argument that Blue Tampa would not be able to get the maximum housing credit limit requested and would have a funding shortfall.

82. The RFA expressly authorizes an applicant to request up to the maximum housing credit limit for the size of the county where the proposed development is located. An applicant's housing credit request amount will only be adjusted if the request is greater than the maximum housing credit request limit. That condition has not occurred. Blue Tampa requested an amount equal to the maximum housing credit limit for Hillsborough County, as the parties stipulated. It would be contrary to the RFA specifications to make an adjustment to reduce Blue Tampa's housing credit request amount.

83. Similarly, the RFA expressly provides that the credit equity stated in a credit equity proposal should not be adjusted unless the anticipated amount

of credit allocation *stated in the equity proposal* is greater than the eligible housing credit request amount. That condition also has not occurred. It would be contrary to the RFA specifications to make an adjustment to the credit equity stated in the credit equity proposal.

84. Blue Tampa admits that it mistakenly entered its new construction costs in the HC Ineligible Costs column rather than the HC Eligible Costs column. Ms. Levy credibly explained why that error was harmless and has no effect on the eligibility analysis. Nothing in the RFA dictates that placing fully disclosed costs in an incorrect sub-category column renders an application ineligible. Blue Tampa's pro forma meets the only eligibility requirement, by disclosing all anticipated costs, disclosing and properly documenting all anticipated funding sources, and showing that the funding sources meet or exceed all anticipated uses or costs.

85. A similar issue was addressed in *Arthur Mays Villas Phase One, LLC v. Florida Housing Finance Corporation*, Case No. 21-0610BID (Fla. DOAH May 26, 2021; FHFC June 18, 2021). There, the petitioner challenged a successful applicant for allegedly overreporting the value of its real property in its cost pro forma. The challenger claimed that the alleged erroneous value was a material misrepresentation that should render the application ineligible. Judge Culpepper ultimately found:

As to Arthur Mays' second point, Arthur Mays also failed to prove that Florida Housing should not have considered MHP's application due to a "material misrepresentation" regarding the Total Land Cost of its development. On the contrary, Ms. Button persuasively testified that the amount MHP reported as its Total Land Cost (\$7,000,000) had no effect on Florida Housing's selection of Southpointe Vista for funding. Ms. Button credibly established that its Review Committee did not consider the property cost of MHP's development when it scored MHP's application. Instead, Ms. Button convincingly explained the Total Land Cost is analyzed during the credit underwriting phase,

which only occurs after the competitive solicitation process is completed. Ms. Button further effectively represented that the fact that MHP reported its Total Land Cost as \$7,000,000 was not a "material" misrepresentation in that the figure stated did not provide MHP's application a competitive or unfair advantage.

Arthur Mays, RO at 27, ¶71.

86. The same reasoning applies here. As in *Arthur Mays*, the challenged information (identifying all anticipated new construction costs but mistakenly putting them in the wrong sub-category column) is not an eligibility item, did not affect eligibility, scoring, ranking, or the funding selection under the RFA. It was not a "material" representation, as the misplacement of the anticipated construction costs on the pro forma did not give Blue Tampa's application a competitive or unfair advantage.

87. Modello's attempt to recast the pro forma, through calculations intending to show what would happen if the new construction costs actually were HC Ineligible Costs, is an exercise that is irrelevant at this competitive solicitation stage and impermissible under the RFA. A similar attempt made in *WHFT LL Workforce*, Case No. 25-1110BID, was rejected by Administrative Law Judge James Peterson. In that case, Judge Peterson ruled that for a challenger to succeed in challenging an applicant's development cost pro forma, the challenger had to show that the funding sources anticipated by the applicant do not exceed the anticipated costs (such that there would be a funding shortfall). In doing so, Judge Peterson specifically rejected testimony from the petitioner and its expert attempting to recast the pro forma and substitute a reduced amount of equity funding for the amount stated in the equity proposal letter. Judge Peterson found the analysis unpersuasive and irrelevant:

In an attempt to question the validity of Catchlight's application funding sources (the Chase Letter and Self-Source Letter), Fern Grove proffered, subject to

Catchlight and Florida Housing's objection, the testimonies of Mr. Zimmerman and Robert Von, together with independently prepared pro formas and related documents (proffered as proffered exhibits 2 through 4 and 10 through 12). Upon consideration of the objections and responses, the proffered testimonies and evidence are rejected as unpersuasive and irrelevant to this proceeding. At issue in this proceeding is Florida Housing's preliminary agency action regarding eligibility determinations, not a challenge to the RFA's terms or credit underwriting. Credit underwriting "is a de novo review of all information supplied, received or discovered during or after any competitive solicitation scoring and funding preference process, prior to the closing on funding, including the issuance of IRS Forms 8609 for Housing Credits." Fla. Admin. Code R. 67-48.0072.

WHFT, RO at 22 n.4. As Judge Peterson determined, at the competitive solicitation stage, the appropriate place to look to see if an application has shown its anticipated funding sources is in the equity proposal letter submitted by the applicant. That is what the RFA requires.

88. Ms. Levy persuasively explained why putting a disclosed cost in the wrong sub-category should not be considered an irregularity at all. Instead, at the competitive solicitation stage, it must be considered in the context intended by the RFA eligibility requirements and scoring criteria: fully disclosed anticipated total costs match up with anticipated documented funding sources, sufficient to render the application eligible for funding. The breakdown of total project costs and itemization of specific costs are fine-tuned during the credit underwriting stage.

89. Ms. Levy also persuasively explained that if the admitted miscategorization of a disclosed cost item in the wrong sub-category that is neither an eligibility requirement nor a scored item were considered an irregularity, it would have to be deemed a waivable minor irregularity. It involves a simple typographical error, typing the correct number in the wrong

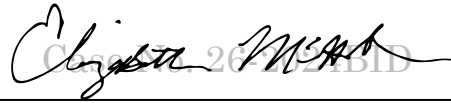
sub-category column. Since the sub-category columns have no bearing on the eligibility determination for a development cost pro forma, or any scoring, treating the correct number as if it were placed in the correct column has no competitive impact, provides no competitive advantage, creates no uncertainty regarding compliance with the RFA, and the interests of Florida Housing and the public are unaffected.

90. The undersigned concludes that Blue Tampa complied with the development cost pro forma requirements of the RFA. Because all anticipated costs and sources were disclosed, because the sources equal or exceed the uses, and because the typographical error did not affect the application's eligibility, Blue Tampa proved its allegation that its application is eligible for funding. The evidence does not establish that Florida Housing's initial determination that Blue Tampa's application was eligible for funding was contrary to statutes, rules or policies, or the solicitation specifications, nor was it clearly erroneous, contrary to competition, arbitrary, or capricious.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Florida Housing Finance Corporation enter a final order: (a) sustaining the protest filed by Blue Tampa 2, LLC; (b) determining that the application submitted by Modello Homes II, LLC, in response to Request for Applications 2026-103 is ineligible for funding; (c) rescinding the preliminary award of funding to Modello Homes II, LLC; (d) determining that the application submitted by Blue Tampa 2, LLC, in response to Request for Applications 2026-103 is eligible for funding; and (e) taking further action consistent with this Recommended Order and the RFA, including, if required by the RFA's ranking and selection process, awarding the funding to Blue Tampa 2, LLC, as the next eligible applicant.

DONE AND ENTERED this 26th day of June, 2026, in Tallahassee, Leon
County, Florida.



ELIZABETH W. MCARTHUR
Administrative Law Judge
DOAH Tallahassee Office

Division of Administrative Hearings
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Tallahassee, Florida 32311
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Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of June, 2026.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 10 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

**RFA 2026-105
All Applications**

Application Number	Name of proposed Development	County	Authorized Principal Representative	Name Of Applicant	CRH or SLU?	Proposed number of Residents	Total Units	Funding Award Amount	Eligible?	Qualifying Financial Assistance	Florida Job Creation	Lottery Number
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Eligible Applications

2026-358G	The Retreat	Duval	Kari F Bates	The Arc Jacksonville, Inc.	CRH	6	1	\$1,436,500	Y	Y	Y	5
2026-359G	The Villas at The Arc Jacksonville Village	Duval	Kari F Bates	The Arc Jacksonville, Inc.	SLU	N/A	6	\$1,436,500	Y	Y	Y	3
2026-362G	2026 Seminole - Maple CRH	Seminole	Craig A. Cook	Crystal Lake Supportive Environments, Inc. (dba Attain, Inc.)	CRH	6	1	\$1,436,500	Y	Y	Y	4
2026-363G	2026 Orange - Jackson CRH	Orange	Craig A. Cook	Crystal Lake Supportive Environments, Inc. (dba Attain, Inc.)	CRH	6	1	\$1,436,500	Y	Y	Y	6

Ineligible Applications

2026-360G	Church Street House	Palm Beach	Richard D Busto	Autism Project of Palm Beach County, Inc.	CRH	6	1	\$1,436,500	N	Y	Y	2
2026-361G	Sweetie's Home (f/k/a Ravenswood Community Residential Home)	St. Lucie	Keith W. Muniz	Advocates for the Rights of the Challenged of the Treasure Coast, Inc. (ARC of the Treasure Coast, Inc.)	CRH	6	1	\$1,436,500	N	Y	Y	1

RFA 2026-105
Review Committee Recommendations

Total Grant Funding Available in RFA	\$ 2,873,000.00
Total Grant Funding Allocated	\$ 2,873,000.00
Total Grant Remaining	\$ -

Application Number	Name of proposed Development	County	Authorized Principal Representative	Name Of Applicant	CRH or SLU?	Proposed number of Residents	Total Units	Funding Award Amount	Eligible?	Qualifying Financial Assistance	Florida Job Creation	Lottery Number
2026-362G	2026 Seminole - Maple CRH	Seminole	Craig A. Cook	Crystal Lake Supportive Environments, Inc. (dba Attain, Inc.)	CRH	6	1	\$1,436,500	Y	Y	Y	4
2026-358G	The Retreat	Duval	Kari F Bates	The Arc Jacksonville, Inc.	CRH	6	1	\$1,436,500	Y	Y	Y	5