

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING
FINANCE CORPORATION

CASE NO. 2019-061VW

SAILBOAT BEND II, LTD.,

Petitioner,

vs.

FHFC Application No. 2018-284C
REQUEST FOR APPLICATIONS: 2017-113

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

PETITION FOR WAIVER OF RULE 67-48.0072(17)(h),
FLORIDA ADMINISTRATIVE CODE

Pursuant to section 120.542, Florida Statutes, and rule 28-104.002, Florida Administrative Code, Petitioner Sailboat Bend II, Ltd. (“Sailboat II” or “Petitioner”) submits this Petition to Respondent Florida Housing Finance Corporation (“Florida Housing”) for a waiver of rule 67-48.0072(17)(h), Florida Administrative Code. Sailboat II submitted an application (No. 2018-284C) for Housing Credits (also known as tax credits) in response to Request for Applications (“RFA”) 2017-113. Sailboat II seeks a waiver of rule 67-48.0072(17)(h) so that a subcontractor affiliated with Sailboat II’s Developer – Step-Up Apprentice Program (“Step-Up”) – may serve as the cabinet manufacturer and installer on the proposed Development. In support of this Petition, Sailboat II states:

A. PETITIONER AND ATTORNEY

1. The name, address, telephone number, and email address for Petitioner is Sailboat Bend II, Ltd., 3 Miami Central, 161 NW 6th Street, Suite 1020, Miami, FL 33136; 305-357-4725; lwong@apccommunities.com. For purposes of this proceeding, the contact information for

Petitioner shall be that of the undersigned counsel.

2. The name, address, telephone number, and email address for Petitioner’s attorney is: Donna E. Blanton, Radey Law Firm, 301 South Bronough Street, Suite 200, Tallahassee, Florida 32301; 850-425-6654; dblanton@radeylaw.com.

B. BACKGROUND¹

3. Sailboat II submitted an application in response to the RFA. Sailboat II proposed to use equity raised from the Housing Credits to build a 110-unit, high-rise development in Broward County (City of Fort Lauderdale) called Sailboat Bend Apartments II to serve the elderly demographic.

4. On March 16, 2018, Florida Housing’s Board of Directors preliminarily selected Sailboat II for funding. Sailboat II was subsequently invited to enter credit underwriting and submitted a signed acknowledgement accepting the invitation on September 24, 2018.

5. One of the developers of Sailboat II (HEF Development LLC and its sole member, Housing Enterprises of Florida, Inc.) is affiliated with the Housing Authority of the City of Fort Lauderdale (“HACFL”). HACFL operates a state-certified Step-Up Apprenticeship Program that

¹ The following background information regarding Sailboat II is provided to facilitate staff’s preparation of a memorandum to the Florida Housing Board of Directors (“Board”):

- Development Name: Sailboat Bend II, Ltd.
- Developer, including at least one natural person Principal: APC Sailboat Bend II Development, LLC; HEF Development, LLC; Howard D. Cohen
- County of Development: Broward
- Number of Units: 110
- Type: High Rise
- Set Asides: 10% at 28% AMI; 81% at 60% AMI; 9% market rate
- Demographics: Elderly
- Funding Amounts: \$2,561,000 in 9% Housing Credits

handles the facilities maintenance for HACFL's housing portfolio and operates as the cabinet manufacturing and installation subcontractor for HACFL's new developments. Step-Up has been operated by HACFL since 1994. Its mission is to provide a job training program designed to enhance vocational and educational skills resulting in employment opportunities for residents of low-income housing; low-income individuals; and at-risk young adults, including high school dropouts, those lacking employable job skills, and/or the previously incarcerated. During the two-year state certified program, apprentices are trained in construction skills with a specialty in housing rehabilitation and building maintenance for occupations in the public and private sectors. All apprentices are required to obtain their GED while in the program. Approximately 20 apprentices are currently enrolled in the program, and by the end of this year 263 apprentices will have graduated from the program.

6. Rule 67-48.0072(17)(h), Florida Administrative Code, prohibits construction costs from being subcontracted to any entity that has common ownership or is an Affiliate of the General Contractor or the Developer. Application of this rule would prohibit Sailboat II from using Step-Up as the cabinet manufacturing and installation subcontractor for Sailboat II.

7. Sailboat II has been working with the staff of Florida Housing to determine if Step-Up can be used as a subcontractor, despite rule 67-48.0072(17)(h). Staff asked Sailboat II to solicit bids from other subcontractors, which Sailboat II did. Three bids were received for the fabrication, delivery, and installation of kitchen cabinetry and bathroom vanities at Sailboat II. Treston USA bid \$385,500; Distinctive bid \$410,298; and Step-Up bid \$466,399.45. Although Step-Up was not the low bidder, Step-Up has agreed to match the bid of Distinctive, the next lowest bidder. Additionally, the General Contractor has agreed not to charge a general contractor fee on the scope

of work that would be performed by Step-Up. Through this Petition, Sailboat II reaffirms these commitments.

8. The requested waiver is permanent in nature.

C. RULE FROM WHICH WAIVER IS SOUGHT

9. Rule 67-48.0072(17)(h) provides:

(17) The General Contractor must meet the following conditions:

.....

(h) Ensure that no construction cost is subcontracted to any entity that has common ownership or is an Affiliate of the General Contractor or the Developer. For purposes of this paragraph, “Affiliate” has the meaning given it in subsection 67-48.002(5), F.A.C., except that the term ‘Applicant’ therein shall mean ‘General Contractor.’”

D. STATUTES IMPLEMENTED BY THE RULE

10. Rule 67-48.0072(17)(h) implements section 420.5087 (State Apartment Incentive Loan Program), section 420.5089 (HOME Investment Partnership Program and HOME Investment Partnership Fund), and section 420.5099 (allocation of the low-income housing tax credit program). All of these programs are part of the Florida Housing Finance Corporation Act, found at sections 420.501-420.517, Florida Statutes. One of the purposes of the Act is “to create new programs to stimulate the construction and substantial rehabilitation of rental housing for eligible persons and families.” § 420.502(8), Fla. Stat.

E. JUSTIFICATION FOR REQUESTED WAIVER

11. Section 120.542(1), Florida Statutes, provides that “[s]trict application of uniformly applicable rule requirements can lead to unreasonable, unfair, and unintended results in particular instances. The Legislature finds that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation.” That procedure requires those seeking

a variance of, or waiver from, a particular rule to demonstrate that application of the rule would create a substantial hardship or would violate principles of fairness. § 120.542(2), Fla. Stat. Petitions for variances and waivers also are required to demonstrate the purposes of the underlying statute will be achieved. *Id.*

12. Strict adherence to rule 67-48.0072(17)(h) would prevent Sailboat II from using Step-Up, an established subcontractor that has installed more than 1,000 kitchen and bathroom cabinets in new affordable housing developments in Broward County since 2011. Step-Up's agreement to match the second-lowest bid demonstrates that Step-Up is competitive in its pricing while also providing on-the-job training and a classroom curriculum to its apprentices. Principles of fairness would be violated if Sailboat II is prevented from taking advantage of this successful program that provides value not only to HACFL's affordable housing portfolio, but to the community at large. Moreover, not granting the waiver would be unfair because Sailboat II has agreed that the General Contractor will not charge a general contractor fee on the scope of work that would be performed by Step-Up.

13. The requested waiver will not adversely affect any party, including any other party that applied to receive an allocation of Housing Credits in RFA 2017-113, or Florida Housing.

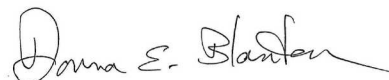
14. The statutes underlying the rule will be served by the approval of Sailboat II's waiver request. Section 420.502(4), Florida Statutes, states that Florida faces "a serious shortage of decent, safe, and sanitary housing in the state available to persons and families of low, moderate, and middle income" One of the primary purposes of the Act is to facilitate the availability of affordable housing. Granting the waiver request will not only further these goals, but will assist those in the Step-Up program who are furthering their education and receiving valuable training

that likely will lead to future employment.

F. ACTION REQUESTED

15. For the reasons expressed, Sailboat II respectfully requests that the Florida Housing Board of Directors grant the requested waiver of rule 67-48.0072(17)(h).


Respectfully submitted,



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Counsel for Petitioner

CERTIFICATE OF SERVICE

I CERTIFY that the foregoing document was filed by email to Ana McGlamory, the Florida Housing Finance Corporation Clerk, at corporationclerk@floridahousing.org and Ana.McGlamory@floridahousing.org and with a copy served by hand delivery to the Joint Administrative Procedures Committee, 680 Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1400, this 10th day of July, 2019.



Donna E. Blanton