

BEFORE THE STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

LEGACY POINTE, INC.,

Petitioner,

vs.

FHFC Case No. 2009-028GA
RFP No. 2009-03

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

RESPONSE TO NOTICE OF INTENT TO DISMISS

Petitioner Legacy Pointe, Inc. ("Legacy") hereby responds to Florida Housing's Notice of Intent to Dismiss as follows:

1. On August 20, 2009, Legacy submitted its Notice of Intent to challenge ("Notice") Florida Housing's rejection of Legacy's Response to RFP 2009-03 ("RFP"). Florida Housing subsequently issued its Notice of Intent to Dismiss Legacy's challenge.
2. As reflected in Florida Housing's Notice, the sole grounds for dismissal is the fact that Legacy's Notice was not filed within 72 hours of the Notice of Agency Action as allegedly required by Section 120.57(3), F.S.
3. Florida Housing's Notice of Intent and grounds for dismissal is erroneous in that the instant proceeding is not a contract solicitation or public procurement governed by Section 120.57(3), F.S., and Chapter 67-49, F.A.C.

4. Through the RFP process, Florida Housing is not purchasing contractual services or commodities but is instead awarding federal funds to developers. See Rule 67-49.001, F.A.C. (Defining "contractual service" to mean the rendering by a contractor of its time, skill and effort and "commodity" to mean supplies, materials, goods, merchandise, food, equipment, and other personal property). Therefore, the time limitations reflected by Section 120.57(3), F.S., do not apply here.

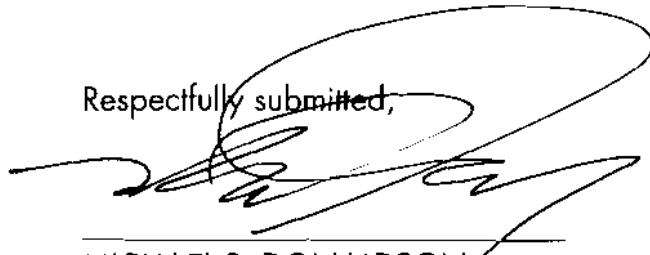
5. Legacy was entitled to a minimum of fourteen days within which to file its Notice of Protest in this proceeding. In the absence of a pure public procurement as contemplated by Sections 120.57(3) and 287, F.S., Florida Housing is required to follow the provisions of 120.569 and .57, F.S., which at a minimum provide for reasonable notice and an opportunity for a hearing of not less than fourteen days. See Section 120.569(2)(b), F.S.

6. Alternatively, Legacy was entitled to a twenty-one day period within which to file its Notice of Protest pursuant to Rule 67-48.005, F.A.C.

7. Restricting Legacy to a three-day time period in a non-procurement context is not reasonable or authorized and denies Legacy the rights afforded by Section 120.569, F.S.

8. Accordingly, Legacy's Notice of Protest should not be dismissed as proposed in Florida Housing's Notice. Rather, Legacy should be provided an opportunity to file its Formal Written Protest and ultimately have its case determined on the merits.

Respectfully submitted,

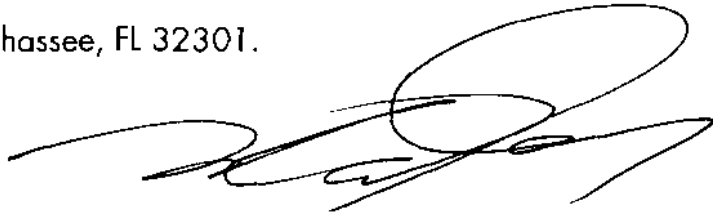


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 8th day of September, 2009, to the Agency Clerk and Wellington Meffert, General Counsel, Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, FL 32301.



MICHAEL P. DONALDSON