

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: ARBOURS AT HESTER  
LAKE, LLC

FHFC CASE NO.: 2019-085VW

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**ORDER GRANTING WAIVER OF RULE 67-48.0072(17)(h), F.A.C.**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation on October 31, 2019, pursuant to a Petition for Waiver of Rule 67-48.0072(17)(h), Florida Administrative Code (the "Petition") filed by Arbours at Hester Lake, LLC ("Petitioner" or "Arbours") on October 8, 2019. Notice of the Petition was published on October 9, 2019, in Volume 45, Number 197, of the Florida Administrative Register. Florida Housing received no comments regarding the Petition. After careful review of the record and being otherwise fully advised in the premises, the Board of Directors (the "Board") of Florida Housing hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.
2. Petitioner was selected to receive competitive housing credits under RFA 2017-111 to assist in the development of Arbours at Hester Lake, an 80-unit family housing development in Dade City, Florida. (the "Development").
3. Rule 67-48.0072, Fla. Admin. Code, provides in relevant part:  
  
(17) The General Contractor must meet the following conditions:

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HOUSING FINANCE CORPORATION

*James Lamoy* DATE: 10/31/19

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(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."

4. On May 4, 2018, Petitioner was preliminarily selected for funding under RFA 2017-111. Petitioner was subsequently invited to enter credit underwriting and accepted the invitation. Petitioner asserts that it requested bids from five companies to serve as General Contractor for its proposed Development. Petitioner states that three companies declined to bid. Two companies submitted bids, Arlington Construction Services, LLC ("Arlington") and Winter Park Construction Co ("WPC"). According to Petitioner, Arlington's bid was \$2.3 million lower than the bid by WPC. Petitioner asserts that Arlington's long existing business structure is to subcontract aspects of its construction responsibilities to two Affiliates, Professional Building Services, LLC ("PBS") and CW Construction Services, LLC ("CW"). Petitioner states that through the use of those Affiliates, Arlington is able to control performance, obtain better pricing, and mitigate its insurance risks. According to Petitioner, Arlington's bid to serve as General Contractor for Arbours at Hester Lake is contingent on Arlington's use of its established business structure, including use of the Affiliated subcontractors.

5. Application of Rule 67-48.0072(17)(h), Fla. Admin. Code, would prohibit Petitioner from using Arlington as its General Contractor. Petitioner asserts

that it understands and will comply with the purpose of the rule, which is to ensure that neither the Developer nor the General Contractor exceeds permissible limits on profits through the use of affiliated entities. Petitioner provided a sworn affidavit from the President of Arlington that confirms that all labor and all materials provided by the Affiliated entities will be at cost with no profit built into those items. Further, Petitioner asserts that it is agreeable to have the construction activities monitored by Florida Housing's independent credit underwriters and to auditing by an independent Certified Public Accountant ("CPA") of all payments to the Affiliates.

6. Additionally, Petitioner commits that the CPA will confirm and/or verify no less than forty percent (40%) of the Development's costs, per the Final Cost Certification Application Package, in addition to the confirmation and verification of one hundred percent (100%) of the work performed by the Affiliates. Finally, Petitioner asserts that it is willing to limit the General Contractor's fee to 12.36 percent of actual construction cost, which is less than the maximum of 14 percent permitted by Rule.

7. The Board finds that granting the waiver will not impact other participants in funding programs administered by Florida Housing, nor would it detrimentally impact Florida Housing or the Development.

8. Section 120.542(2), Florida Statutes provides in pertinent part:

Variations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application

of a rule would create a substantial hardship or would violate principles of fairness.

9. Petitioner has demonstrated that the waiver is necessary and, if the waiver were not granted, Petitioner would suffer a substantial hardship. Petitioner has also demonstrated that the purpose of the underlying statute, which is to “encourage development of low-income housing in the state” (§420.5099, Fla. Stat.), would still be achieved if the waiver is granted.

10. The Board finds that strict application of the above Rule under these circumstances would cause substantial hardship to Petitioner, and that granting this request furthers Florida Housing's statutory mandate to provide safe, sanitary and affordable housing to the citizens of Florida.

**IT IS THEREFORE ORDERED:**

Petitioner’s request for a waiver of Rule 67-48.0072(17)(h), Fla. Admin. Code, is hereby **GRANTED** to allow Petitioner’s General Contractor, Arlington, to use Affiliated subcontractors, PBS and CW, provided that: 1) the General Contractor fee is limited to 12.36%, 2) all labor and all materials provided by the Affiliated entities will be at cost with no profit built into those items, 3) the credit underwriter will monitor the construction activities, 4) an independent CPA will confirm/audit all payments to the Affiliates and verify one hundred percent of the work performed by the Affiliates, 5) in addition to confirming/auditing all payments to the Affiliates,

an independent CPA will confirm and/or verify an additional forty percent of the Development's costs per the Final Cost Certification Application Package.

**DONE and ORDERED** this 31st day of October, 2019.



Florida Housing Finance Corporation

By:   
Chair

**Copies furnished to:**

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Joint Administrative Procedures Committee  
Attention: Ms. Yvonne Wood  
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**NOTICE OF RIGHT TO JUDICIAL REVIEW**

**A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTIONS 120.542(8), 120.569, AND 120.57, FLORIDA STATUTES. SUCH PROCEEDINGS ARE COMMENCED PURSUANT TO CHAPTER 67-52, FLORIDA ADMINISTRATIVE CODE, BY FILING AN ORIGINAL AND ONE (1) COPY OF A PETITION WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329.**