

**BEFORE THE STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

BSMM PASCO, LLC

Petitioner,  
vs.

FHFC Case No. 2020-039BP  
RFA No. 2020-103  
Application No. 2020-477CS

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

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**FORMAL WRITTEN PROTEST AND  
PETITION FOR ADMINISTRATIVE HEARING**

Petitioner, BSMM Pasco, LLC (“BSMM”), pursuant to sections 120.57(3), Florida Statutes (“F.S.”), and Rules 28-110 and 67-60, Florida Administrative Code (“FAC”) hereby files this Formal Written Protest and Petition for Administrative Hearing regarding the review, ranking, scoring and eligibility decisions of Respondent, FLORIDA HOUSING FINANCE CORPORATION (“Florida Housing”) in awarding funding pursuant to Request for Application 2020-103 Housing Credit and SAIL Financing for Homeless Housing Developments Located in Medium and Large Counties (the “RFA”). In support BSMM provides as follows:

1. BSMM is a Florida limited liability corporation in the business of providing affordable housing. BSMM is located at 5300 W. Cypress Street, Suite 200, Tampa, Florida 33607.

2. Florida Housing is the allocating agency for the State of Florida that was granted the authority to issue the RFA for the purpose of construction, redevelopment, or rehabilitation of much needed affordable housing. Florida Housing's address is 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301.

3. On February 10, 2020, Florida Housing issued the RFA which offered funding as follows:

## SECTION ONE INTRODUCTION

This Request for Applications (RFA) is open to for profit and Non-Profit Applicants proposing the development of housing for Homeless individuals and families, that also include a portion of units for Persons with Special Needs located in the Medium and Large Counties. There is a goal to select at least one Application from a Non-Profit Applicant (“Non-Profit Application”).

The intent of this RFA is to help communities address the significant need for housing for some of their most vulnerable individuals that are homeless or living in more restrictive settings due to the lack of stable housing and coordinated access to appropriate community-based healthcare and supportive services. This RFA proposes to utilize Competitive Housing Credits (HC) in conjunction with State Apartment Incentive Loan (SAIL) funding.

### A. Competitive HC

Florida Housing Finance Corporation (the Corporation) is required by section 420.507(48), F.S., to reserve up to 5 percent of its annual allocation of low-income housing tax credits to allocate by competitive solicitation for high-priority affordable housing developments, such as housing for Homeless Persons and their families, in communities throughout the state.

The Corporation expects to offer an estimated \$4,075,000 of Competitive Housing Credits available to proposed Developments under this RFA.

### B. SAIL:

The Corporation expects to offer an estimated \$10,262,100 of SAIL available to proposed Developments under this RFA. A portion of this funding may be used as an ELI Loan for ELI Set-Aside Units as further described in Section Four, A.10.a.(2)(b) of the RFA. The ELI loan is a forgivable loan.

### C. National Housing Trust Fund (NHTF)

The Corporation expects to offer an estimated \$1,339,200 in National Housing Trust Funds (NHTF) to support NHTF Units that meet the requirements outlined in Section Four, A.6.d.(2)(c) of the RFA. NHTF

funding may be requested by Applicants that select the Development Category of New Construction and commit to NHTF Units. In such case, the invitation to enter credit underwriting will inform the Applicant of the NHTF award amount, and the requirement to set-aside NHTF Units.

The Corporation's objective is to ensure that, to the extent possible, financing to develop housing to serve Homeless households is provided across the state. To this end, the Corporation has divided the state into four regions with relatively equal Homeless populations, based on the Homeless household counts outlined in the 2019 Statewide Rental Market Study, ensuring that all counties that are part of one regional Homeless Continuum of Care are located in the same region. The Corporation's approach is to target financing to each region over time. The regions are: North Florida Region, Central Florida Region, Tampa Bay Region and South Florida Region, and the counties associated with these Regions can be found in Section Four, A.5.a. of the RFA. This RFA includes a goal to fund at least one Homeless Development in the Central and Tampa Bay regions, with a preference to fund at least one Homeless Development in a Large County and at least one Homeless Development in a Medium County. The Large and Medium counties within each region are listed on the chart in Section Four, A.5.a of the RFA. This goal and preference are further outlined in Section Five B of the RFA.

The Corporation is soliciting applications from qualified Applicants that commit to provide housing in accordance with the terms and conditions of this RFA, inclusive of all Exhibits to this RFA, applicable laws, rules and regulations, and the Corporation's generally applicable construction and financial standards.

4. Through the issuance of the RFA, Florida Housing sought to solicit proposals from qualified applicants that would provide affordable housing consistent with the terms and conditions of the RFA, applicable laws, rules, and regulations.

5. On March 30, 2020, BSMM submitted its Application in response to the RFA that included information concerning the development of a 88 unit complex in Pasco County, Florida, named Palmetto Hideaway. BSMM requested \$1,700,000 in housing credits, \$4,763,750 in SAIL funding and \$367,300 in ELI funding. Florida Housing received 4 applications in response to the RFA.

6. As the owner and developer of a project seeking funding through the RFA, BSMM is substantially affected by the review, scoring, and ranking of the responses to the RFA. The results of the proceeding affects BSMM’s ability to obtain funding through the RFA. Consistent with the primary mission and goal of the RFA, BSMM seeks to provide much needed affordable housing in Pasco County. Without the funds provided by the RFA, BSMM will be unable to provide this much needed housing. Accordingly, BSMM’ substantial interests are affected by the decisions made by Florida Housing.

7. At Section Five the RFA lists the eligibility items each applicant must meet . Additionally at Section Five (A)(2) the RFA identified the point items to be awarded as follows:

**2. Awarding Points**

| Point Items   | Maximum Points |
|---|----------------|
| Submission of Principal Disclosure Form stamped by Corporation as "Pre-Approved"                | 5              |
| Development Experience Withdrawal Disincentive  | 5              |
| Operating/Managing Experience   | 40             |
| Access to Community-Based Services and Resources:   | --             |
| Access to Community-Based General Services  | 20             |
| Access to Community-Based Services and Resources that Address Tenants’ Needs                    | 35             |
| Approach Toward Tenant Application and Screening Procedures for Households Applying for Tenancy | 25             |
| Involvement in the Local Homeless Resources Network   | 15             |
| <b>Total Possible Points</b>  | <b>145</b>     |

More detail concerning this subjective scoring in the RFA is found at Section Four (C)((A)(1) narrative scoring.

8. The RFP at Section Six describes the evaluation and award process as follows:

**SECTION SIX  
 AWARD PROCESS**

Committee members shall independently evaluate and score their assigned portions of the submitted Applications, consulting with non-committee Corporation staff and legal counsel as necessary and appropriate.

The Committee shall conduct at least one public meeting during which the Committee members may discuss their evaluations, select Applicants to be considered for award, and make any adjustments deemed necessary to best serve the interests of the Corporation's mission. The Committee will list the Applications deemed eligible for funding in order applying the funding selection criteria outlined in Section Five above and develop a recommendation or series of recommendations to the Board.

9. On May 13, 2020, the designated Review Committee met and considered the Applications submitted in response to the RFA. The Review Committee was made up of Florida Housing staff. At the meeting the Review Committee members determined the eligibility of each Application submitted and read into the record individual scores for each Application. The Review Committee added up the scores awarded and made their recommendation based on the procedure set forth in the RFA. In its consideration, the Committee determined that BSMM's Application should be awarded 115 out of a possible 145 points which was the third highest scoring Application.

10. Specifically the scoring for each submitted Application was as follows:

|                   |     |
|-------------------|-----|
| Innovare          | 124 |
| Durham Place      | 117 |
| Palmetto Hideaway | 115 |
| Plateau Village   | 114 |

11. Based on the eligibility determination and scores the Review Committee, following the selection criteria of the RFA, recommended allocating funding to the Innovare and Plateau Village Applications. Both the Durham Place and Palmetto Hideaway Applications were deemed eligible but were not recommended for funding as not enough funding remained to fully fund each proposed project.

12. On June 11, 2020, Florida Housing's Board of Directors accepted the Review Committee's ranking and scoring as presented but also allocated funding to the next highest

ranking eligible unfunded application, Durham Place, leaving the Palmetto Hideaway Application as the only unfunded eligible application.

13. On June 16, 2020, BSMM timely filed its Notice of Intent to Protest. This Protest is being timely filed to gain maximum points in an effort to be the next highest ranking eligible unfunded Application. Because of the closeness in scoring between BSMM and the next highest ranked Application, BSMM's substantial interests will be impacted by Florida Housing actions. Accordingly, BSMM has standing to file this challenge. Florida Housing has waived the Protest Bond requirement for this RFP.

14. As disclosed in the notes of the Review Committee and as disclosed orally during the Review Committee meeting, BSMM did not achieve maximum score for several RFA scoring items. Based on its substantively superior response BSMM is entitled to additional points as explained more fully below.

15. At RFA Section Four (C)(4) each Applicant was asked to provide a narrative response concerning its involvement in the Local Homeless Resources Network. An applicant could gain up to 15 points for its response to this section.

16. The RFA specifically asks for any response to address the following:

Describe how the Applicant is and/or will be involved in the local homeless resources network to gain a full understanding of the community's homelessness issues and housing needs. Such network may include one or both of the following: 1) The local Continuum of Care and its member agencies; and 2) Departments of the local government, particularly its social services department, but other departments such as housing and community development.

The narrative should describe how the Applicant has or will employ its own knowledge or the knowledge of experienced, local stakeholders and/or other entities that will be needed to develop and manage the property to support access, stable tenancy and services for its formerly homeless tenants.

The Applicant's narrative should also describe these stakeholders/entities and their roles in decisions about property design and location, and services

coordination; how the community will be involved; and how pre-leasing and ongoing management of the property will incorporate the objectives of stated local homeless strategies, such as a coordinated entry system. The Applicant should provide specific examples of how it will utilize these stakeholders'/entities' expertise.

Whether or not the Applicant has been already embedded in and working with the local homeless community before proposing this Development, describe how the Applicant is now collaborating with local community and stakeholders that have the expertise to ensure the property is meeting local homeless needs both in the short term and over many years.

The Applicant will not receive additional points if portions of responses provided in other scored narratives in this RFA are repeated to answer this scoring item.

The Applicant's description is limited to no more than two typed pages within the text box at question C.4. of Exhibit A. Note: Although the online Application system allows for more than two pages, any portion of the description that is beyond two pages will not be considered.

17. In its Response BSMM comprehensively addressed each and every element listed in the instructions above. BSMM specifically described in detail how Metropolitan Ministries Pasco LLC ("Met Min"), a 51% general partner of the Applicant, has been for over 10 years and will continue to be involved in the Local Homeless Resources Network. BSMM which is an abbreviation for **Blue Sky Met Min**, was only awarded 9 out of 15 points for its response. It is clear that BSMM's response was not adequately considered by Florida Housing's Review Committee and more points should have been awarded. Following are several examples of instruction elements and a comparison with Durham Place, the next highest ranked Applicant, which scored 14 out of 15 points in this section.

18. In describing how the Applicant will gain a full understanding of Pasco County's homelessness issues and housing needs, BSMM's involvement is clearly documented to be superior, due to length of time (10 years), relationship and membership in the Continuum of Care ("CoC"), leadership role in the CoC (Boards, committees) and CoC funding for Miracles in Pasco, Met Min's nearby transitional housing facility. By contrast Durham Place has only had a 3 year

relationship, does not claim to be a member of the CoC, and has allegedly been merely “integrating” and “coordinating” with the CoC.

19. Additionally in discussing its network, BSMM’s network is demonstrated to be larger and more profound than the network offered by Durham Place. This conclusion is based on the actual number of network members specifically identified in each response. Specifically in its Application BSMM identifies 4 Governmental Agencies and 23 other Non-Governmental Agencies. Durham Park in its response, by comparison only mentions 2 Governmental Agencies and zero Non-Governmental Agencies.

20. Both Applications adequately describe and should be graded equally concerning responses to the “employ knowledge that will be needed” section. BSMM presents adequate information proving that its own knowledge is more than adequate. But BSMM also informs the reviewer of with the following statements:

1. The subcommittees identify the best practices necessary for treating or diverting individuals from the jail and prison systems to access the care they need.
2. Met Min coordinates with many partners to meet each family’s needs.
3. This wide array of partners, in addition to Met Min’s current programs and services would be available to support the households living at Palmetto Hideaway.

21. Both Palmetto Hideaway and Durham Place Applications adequately describe their stakeholders/entities and their roles and should be graded equally. BSMM points out that “the site selected for the development of Palmetto Hideaway has been discussed with members of the CoC and the location has the full support by the CoC Governing Board.” Additionally BSMM indicated that this wide array of partners, in addition to Met Min’s current programs and services “would be available to support the households living at Palmetto Hideaway. Case Managers on-site can connect households with referrals to our many partners or with services available through our Family Support Center to assure that they are able to stay housed, stable, and continue on their road to self-sufficiency.”



22. In addressing how it will or has been collaborating with local community Stakeholders, BSMM describes extensive collaboration with dozens of local and community stakeholders. Durham Place's local and community collaborations are limited to large government agencies, an unnamed "private endowment", and the CoC itself even though it has only been "integrating" for 3 years. The Durham Park stakeholder network is limited at best in comparison to the one identified by BSMM. BSMM should have at least scored the same as Durham Place for this RFA section and 5 points should be added to the BSMM Application score.

23. Florida Housing's failure to properly assign points by one of the evaluators at the Involvement in the Local Homeless Resources Network evaluation criteria specifically is clearly erroneous, contrary to competition, arbitrary, and/or capricious, and in violation of the terms of the RFP. With additional points BSMM would be the highest scoring unfunded Application and pursuant to the criteria established by the Board on June 11, 2020, would be selected for funding.

24. BSMM reserves the right to amend this Petition as necessary.

25. Material Issues in Dispute

- a. Whether Florida Housing's review and actions taken concerning the BSMM Application in response to the RFA was arbitrary or capricious, clearly erroneous or contrary to competition.
- b. Whether BSMM's Application has been appropriately reviewed and scored.
- c. Whether BSMM is entitled to additional points.

WHEREFORE, BSMM requests that a settlement meeting be scheduled and to the extent no settlement is reached a hearing scheduled and ultimately the entry of a Recommended and Final Order determining that Florida Housing's review and scoring of applications was contrary to the RFA specifications and to Florida Housing's governing statutes, rules and policies to such an extent as to be arbitrary, capricious, contrary to competition, and clearly erroneous and awarding additional points to the BSMM Application resulting in BSMM being the next highest ranked eligible unfunded Application entitled to an award of funding.

Respectfully submitted,

CARLTON, FIELDS

*/s/ Michael P. Donaldson*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing Formal Written Protest and Petition for Administrative Hearing was filed by e-mail with Ana McGlamory, Corporation Clerk, at ([CorporationClerk@floridahousing.org](mailto:CorporationClerk@floridahousing.org)), and a copy via email to Hugh Brown, General Counsel, at ([Hugh.brown@floridahousing.org](mailto:Hugh.brown@floridahousing.org)), both with the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, FL 32301, this 26th day of June 2020.

*/s/ Michael P. Donaldson*

MICHAEL P. DONALDSON