

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

HFH ORCHID PLACE, LLC,
Petitioner,

DOAH Case No. 24-1629BID
FHFC Case No. 2024-018BP

v.

FLORIDA HOUSING
FINANCE CORPORATION

Respondent

and

BLUE CASL 41, LLC,

Intervenor.

FINAL ORDER

This cause came before the Board of Directors of the Florida Housing Finance Corporation (“Board”) for consideration and final agency action on August 23, 2024. Petitioner HFH Orchid Place, LLC (“Orchid Place” or “Petitioner”) and Intervenor Blue CASL 41, LLC (“CASL” or “Intervenor”) were applicants for RFA 2024-106, Financing for the Development of Housing for Persons With A Disabling Condition or Developmental Disabilities (the “RFA”). After careful review of the record and being otherwise fully advised on the premises, the Board hereby finds:

1. The Board has jurisdiction over the subject matter of this case and the parties hereto.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Ann M. Lamoreaux / DATE: 8/26/2024

2. At the March 26, 2024 Board meeting, two applicants were preliminarily selected for funding, including CASL's application number 2024-304CSN. Orchid Place's application was deemed eligible for funding but, according to the funding selection process outlined in the RFA, was not selected for funding.

3. Orchid Place timely filed a Formal Written Protest and Petition for Administrative Hearing (the "Petition") challenging Florida's Housing determination that CASL's application was eligible for funding..

4. A Notice to Bidders was issued by Florida Housing informing all bidders that their substantial interests might be affected by the Petition. The intervenor timely filed its Notice of Appearance and intervened in the matter. The Petition was referred to the Division of Administrative Hearings ("DOAH").

5. A Final Hearing was conducted on May 30, 2024, via Zoom, before DOAH Administrative Law Judge ("ALJ") G. W. Chisenhall on Orchid Place's challenge to CASL's eligibility. On July 10, 2024, the ALJ issued a Recommended Order finding that CASL should remain eligible for funding and recommending that Florida Housing enter a final order dismissing Orchid Place's Petition. A copy of the Recommended Order is attached as **Exhibit A**.

6. No exceptions were filed to the Recommended Order.

Ruling on the Recommended Order

The Findings of Fact set out in the Recommended Order are based upon competent substantial evidence.

The Conclusions of Law and Recommendation set out in the Recommended Order are reasonable and supported by competent substantial evidence.

ORDER


In accordance with the foregoing, it is hereby **ORDERED**:

- a) The Findings of Fact, Conclusions of Law, and Recommendation of the Recommended Order are adopted as Florida Housing's and incorporated by reference as though fully set forth in this Order;
- b) The relief requested in the Petition is denied, the Petition is dismissed, and CASL's application remains eligible to receive funding under the RFA.

DONE and ORDERED this 23rd day of August, 2024.



Florida Housing Finance Corporation

By:  _____
Chairperson

Copies to:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 2000 DRAYTON DRIVE, TALLAHASSEE, FLORIDA 32399-0950, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

HFH ORCHID PLACE, LLC,

Petitioner,

vs.

Case No. 24-1629BID

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent,

and

Blue CASL 41, LLC,

Intervenor.

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted via Zoom on May 30, 2024, before Administrative Law Judge Garnett W. Chisenhall of the Division of Administrative Hearings (“DOAH”).

APPEARANCES

For Petitioner: J. Stephen Menton, Esquire
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For Intervenor: Michael P. Donaldson, Esquire
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STATEMENT OF THE ISSUE

Whether Florida Housing Finance Corporation’s (“Florida Housing”) preliminary award of funding to Blue CASL 41, LLC (“Blue CASL”), was clearly erroneous, contrary to competition, arbitrary or capricious, and/or contrary to Florida Housing’s governing statutes, rules, policies, or RFA specifications.

PRELIMINARY STATEMENT

This case arises from Florida Housing’s preliminary award of funding for two applications submitted pursuant to Request for Applications 2024-106 entitled “Financing for the Development of Housing for Persons with a Disabling Condition or Developmental Disabilities” (“the RFA”). Only one of the aforementioned applications, submitted by Blue CASL, is at issue in this proceeding.

HFH Orchid Place, LLC (“Orchid Place”), filed a “Formal Written Protest and Petition for Administrative Hearing” with Florida Housing on April 11, 2024, challenging the funding awarded to Blue CASL. While Orchid Place initially raised three issues, only one issue remained for consideration during the final hearing. As stated by Orchid Place in the Joint Pre-Hearing Stipulation:

The only remaining issue to be resolved in this case is whether [Blue CASL] is ineligible for funding because it failed to meet a mandatory eligibility item requiring disclosure of “each officer” of Community Assisted and Supportive Living, Inc. (“CASL”), which was a member of the applicant entity and a

member of the parent company of the co-developer entity. Under the RFA and Florida Housing's rules, "each officer" of a corporation that is a member of the applicant entity or an affiliate of the developer organization must be included on the principal disclosure form set forth in the RFA. Failure to fully and accurately complete the principal disclosure form is a basis for finding an applicant ineligible for funding.

...

[Blue CASL] is ineligible for funding because, as of the application deadline for this RFA (February 15, 2024), the officers of CASL certified by the corporation to the Florida Secretary of State included Phillip J. Brooks, but Mr. Brooks was not included on the mandatory principal disclosure form in [Blue CASL]'s application in response to the RFA.

The undisputed evidence in this case reveals that on February 27, 2023, more than a year BEFORE the application deadline for this RFA, and again on April 2, 2024, more than six weeks AFTER the application deadline for the RFA, the Chief Executive Officer ("CEO") of CASL certified in CASL's annual reports required to be filed by the corporation with the Florida Secretary of State, that Phillip J. Brooks was an officer of the corporation. Notwithstanding the express certifications made by the CEO in the filings with the Florida Secretary of State before and after the application deadline, [Blue CASL] failed to include Phillip Brooks on the RFA mandatory principals disclosure form. Florida Housing's decision to disregard this filing with the Secretary of State and proceed with the preliminary funding decision for [Blue CASL] is arbitrary, capricious, and contrary to competition.

The final hearing took place as scheduled on May 30, 2024. Orchid Place presented testimony from Melissa Levy and Julian Eller. Petitioner's Exhibits 1 through 11 were accepted into evidence. Orchid Place presented

testimony from Mr. Eller, and Intervenor's Exhibits 1, 4 through 11, 14 through 16, and 18 through 20 were accepted into evidence. Joint Exhibits 1 through 9 were also accepted into evidence.

The Transcript from the final hearing was filed on June 11, 2024. The parties filed Proposed Recommended Orders on June 21, 2024, and those Proposed Recommended Orders were considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Based on the evidence adduced at the final hearing, the record as a whole, the stipulated facts, and matters subject to official recognition, the following Findings of Fact are made:

Florida Housing

1. Florida Housing is a public corporation, created pursuant to section 420.504, Florida Statutes (2023),¹ that administers the governmental function of financing affordable housing in Florida.

2. Florida Housing allocates its funding resources by means of requests for proposals or other competitive solicitation methods. Any method utilized by Florida Housing is governed by the bid protest provisions of section 120.57(3), Florida Statutes.

3. The competitive application process at issue in the instant case was commenced by the issuance of a Request for Applications, which is equivalent to a "request for proposal."²

4. As discussed in more detail below, Florida Housing requires a funding applicant to disclose its "principals" and the principals of entities associated

¹ Unless stated otherwise, all statutory references shall be to the 2023 version of the Florida Statutes.

² Florida Administrative Code Rule 67-60.009(4) states that "[f]or the purposes of section 120.57(3)(f), F.S., any competitive solicitation issued under this rule chapter shall be considered a 'request for proposal.'"

with the applicant.³ If one of the aforementioned principals is in arrears to Florida Housing or needs to take some sort of corrective action, then that principal appears on Florida Housing's Past Due Report. If a funding applicant has a principal appearing on a Past Due Report, then that applicant is ineligible for funding.⁴

5. If an applicant appears on a past due report, it can become eligible for funding if the issue is resolved two business days before a Florida Housing review committee meets to evaluate applications and make recommendations for funding.

6. When compiling the Past Due Report, Florida Housing uses information from the Department of State (i.e., "Sunbiz") to identify an applicant's principals.

CASL

7. Under the RFA, only non-profit entities, or for-profit entities in a joint venture with a non-profit, are eligible for funding. Blue CASL is a for-profit limited liability company that applied for funding via the RFA and partnered with Community Assisted and Supported Living, Inc. ("CASL"), as its non-

³ As discussed in more detail under the Conclusions of Law, Florida Administrative Code Rule 67-48.002(94)(a) defines, in part, a principal for a corporation as an officer. While Florida Housing has no rule defining "officer," Florida Law states that a corporation shall have the officers described in its bylaws.

⁴ Melissa Levy, Florida Housing's Director of Multifamily Housing, describes the past due report as follows, "The past due report is put together by our finance department. And so, you know, we have many properties in our portfolio that have active loans on them, and so we have three firms that we outsource our loan servicing to, and so if there are times when an owner does not pay their loan interest or they don't properly have an account set up that they are supposed to, those types of things, then the servicers report that information to Florida Housing and Florida Housing publishes that information on what we call the past due report. And it will – it can have implications for funding, you know, we issue 8609s which are the actual certificates where a development can get their – an applicant can get their tax credit. That's the form we actually give them, [and] we will not issue those forms if they have any financial arrearages . . . So within the RFA if there are principals from the applicant entity that are disclosed on that principal disclosure form, if they are on the past due report, they would not be eligible for funding."

profit entity. As discussed in more detail below, CASL is a “principal” of Blue CASL.

8. CASL provides permanent supportive housing to disabled people. Julian Eller founded CASL in 1998 and is its Chief Executive Officer (“CEO”).⁵

9. CASL’s Articles of Incorporation state that “[t]he business affairs of this corporation shall be managed by a Board of Directors of no less than four (4) persons and no more than ten (10) persons. The number of Directors and the term of office and manner of election shall be as provided by the By-Laws.”

10. The Articles of Incorporation also state that “[t]he officers of the corporation shall be a President, Vice President, a Secretary, a Treasurer, and such other officers as may be provided in the By-Laws.”

11. CASL’s by-laws state that the “administration and management of the corporation shall be vested in the Board of Directors and Officers.” The by-laws mandate that CASL

shall have a President, a Vice President, a Secretary and Treasurer. Officers of the Corporation shall serve at the pleasure of the Board and shall serve without compensation. They shall be chosen by the Board of Directors and shall hold their offices from year to year and shall be elected or re-elected at the annual meeting of the Board of Directors.

12. The by-laws require that all CASL checks be signed by two officers.

13. Phillip J. Brooks began working for CASL in August of 2020 as its Chief Operating Officer (“COO”). He is responsible for CASL’s day-to-day operations and oversees the teams assisting in that effort. He has never been a member of CASL’s Board of Directors, and he does not have the authority to sign or co-sign checks on CASL’s behalf.

14. Nevertheless, CASL submitted an annual report to the Department of State’s Division of Corporations (“the Department of State”) on February 27,

⁵ Prior to 2010, CASL was named Renaissance Manor.

2023, identifying Mr. Brooks as an officer/director of CASL. Another annual report filed with the Department of State on April 2, 2024, also identified Mr. Brooks as an officer/director of CASL. Those annual reports were prepared and submitted by an outsourced Chief Financial Officer.⁶

Orchid Place

15. In response to the RFA, Orchid Place applied for funding to build a 60-unit development in Brevard County to serve persons with developmental disabilities. If Blue CASL is ultimately determined to be ineligible for funding, then Orchid Place will be selected subject to the requirements of credit underwriting.

The Funding at Issue and the Terms of the RFA

16. The RFA was issued by Florida Housing on November 9, 2023, and responses were due by February 15, 2024.

17. Through the RFA, Florida Housing is expected to award an estimated \$3,264,800 of competitive housing tax credits, \$6,000,000 of SAIL funding for housing for persons with disabling conditions, \$4,600,000 in grants for housing for persons with developmental disabilities, and \$5,500,000 in forgivable NHTF or HOME-ARP funding.

18. The RFA sets forth a process in which each applicant is deemed eligible or ineligible based upon certain enumerated eligibility items and is scored based on points for other items. Only applications satisfying all of the eligibility items are eligible for funding.

19. Under the RFA and Florida Housing's rules, "each officer" of a corporation that is a member of the applicant entity or an affiliate of the developer organization must be included on the Principals Disclosure Form in the RFA. Failing to fully and accurately complete the Principals Disclosure Form will cause an applicant to be ineligible for funding.

⁶ As discussed in more detail below, those two submissions were before and after the February 15, 2024, deadline for filing applications in response to the RFA.

20. The RFA states that “[t]o meet eligibility requirements, the Principals Disclosure Form must identify, pursuant to subsections 67-48.002(94), 67-48.0075(8) and 67-48.0075(9), F.A.C., the Principals of the Applicant and Developer(s) as of the Application Deadline.”

21. Rule 67-48.002(94) provides that, for a corporation, a “principal” is “each officer, director, executive director, and shareholder of the corporation.” However, there is no definition of “officer” in the RFA or Florida Housing’s rules.⁷

22. Rules 67-48.0075(8) and (9) establish the principal disclosure requirements for applicants and developers respectively. Under rule 67-48.0075(8), first level disclosure requires the applicant to disclose all of its principals. Second level disclosure requires the applicant to disclose the principals of the entities identified at the first level. Third level disclosure requires the applicant to disclose the principals of the entities identified at the second level.

23. Under rule 67-48.0075(9), first level disclosure requires the applicant to disclose all of the developer’s principals. Second level disclosure requires the applicant to disclose the principals of the entities identified at the first level.⁸

24. After the application deadline, a review committee was to evaluate the applications and make recommendations to Florida Housing’s Board of Directors. The RFA referenced Florida Housing’s Past Due Report by stating that an application would be deemed ineligible for funding if, two business

⁷ Rule 67-48.002(94) requires a limited partnership to disclose “each general partner and each limited partner of the limited partnership.” The Rule requires a limited liability company to disclose “each manager and each member of the limited liability company.”

⁸ Florida Housing requires principal disclosure for several reasons. For instance, it enables Florida Housing to assess whether applications are related and attempting to avoid application limitations. Principal disclosure also enables Florida Housing to verify that principals of the applicant and affiliated entities are not in financial arrears with Florida Housing.

days prior to the review committee's meeting, an applicant, developer, or principal was in arrears to Florida Housing.

Blue CASL Receives a Preliminary Award

25. Florida Housing received six applications in response to the RFA.

26. Blue CASL submitted a timely application for a new 60-unit development in Manatee County. The development would serve people with developmental disabilities and be named Legacy Village.

27. As noted above, Blue CASL is a for-profit limited liability company, and CASL is its non-profit partner. CASL was listed on Blue CASL's application at the second principal disclosure level. Therefore, CASL's principals needed to be disclosed at the third disclosure level.

28. Seven natural persons were identified as officers or directors of CASL, and Mr. Eller was identified as the Executive Director. Mr. Brooks was not identified as a principal.

29. Florida Housing's February 15, 2024, Past Due Report, which was published as of the application deadline, identified Mr. Brooks as an affiliate/financial beneficiary/principal for a CASL affiliate, Community Affordable Supported Living, Inc.,⁹ which has the same officers, directors, and executive director as CASL.

30. Florida Housing referenced Sunbiz when creating the February 15, 2024, Past Due Report. Because Mr. Brooks was listed on Sunbiz as COO of Community Affordable Supported Living, Inc., he was included in the Past Due Report.

31. The issue which led to Community Affordable Supported Living, Inc. appearing on the Past Due Report was timely resolved prior to the

⁹ As noted above, CASL stands for Community *Assisted* and Supported Living, Inc.

Review Committee meeting to evaluate the applications responding to the RFA.¹⁰

32. CASL's Board of Directors met on March 8, 2024, and Mr. Eller explained to the Board that CASL's new Chief Financial Officer, Vickie Tiutyama, discovered that Mr. Brooks was erroneously listed as an officer on CASL's annual reports to the Department of State. Mr. Eller indicated this error needed to be corrected so that only he and the Board members were identified as officers in the annual reports.

33. Florida Housing appointed a Review Committee to consider the applications responding to the RFA. During its March 12, 2024, meeting, the Review Committee found four applications eligible for funding and two ineligible. After applying the RFA's ranking and selection process, the Review Committee preliminarily recommended Blue CASL's application for funding.

34. Florida Housing's Board of Directors ("the Board") met on March 26, 2024 to consider the Review Committee's recommendations. On March 27, 2024, the Board posted notice that two applications, including Blue CASL's, had been selected for funding subject to satisfactory completion of the credit underwriting process.¹¹

35. On April 2, 2024, more than six weeks after the application deadline, Mr. Eller certified in CASL's annual report to the Department of State that Mr. Brooks was an officer of CASL. However, an amended annual report was filed on April 15, 2024, that did not include Mr. Brooks as a CASL officer.¹²

¹⁰ This finding of fact is based on a stipulated fact in the Joint Pre-hearing Stipulation stating that "[t]he Parties agree that a Blue CASL affiliate was properly and timely removed from the Florida Housing Past Due Report after clearing its financial arrearages."

¹¹ At this point in time, Florida Housing was unaware of the discrepancy between the disclosure of principals in Blue CASL's application and the information in CASL's annual reports filed with the Secretary of State. The Review Committee did not utilize Sunbiz and confined its review to the "four corners" of each application.

¹² Orchid Place's "Formal Written Protest and Petition for Administrative Hearing" was filed with Florida Housing on April 11, 2024, and CASL filed its amended annual report, omitting Mr. Brooks as an officer, on April 15, 2024. There is no evidence that CASL's amended annual report was an attempt to undercut one of Orchid Place's arguments by removing

36. The greater weight of the evidence demonstrates that CASL's February 27, 2023, and April 2, 2024, Department of State filings erroneously listed Mr. Brooks as an officer of CASL. He was not a president, vice-president, secretary, or treasurer of CASL. Even though Mr. Brooks, at all times relevant to the instant case, was CASL's COO, he was never a "principal" within the meaning of rule 67-48.002(94)(a). Therefore, Blue CASL correctly omitted him from its disclosure of principals. Given the circumstances found herein, Florida Housing's preliminary decision to award funding to Blue CASL was not clearly erroneous, contrary to competition, arbitrary or capricious, and/or contrary to Florida Housing's governing statutes, rules, policies, or RFA specifications.

CONCLUSIONS OF LAW

37. DOAH has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569 and 120.57(3), Fla. Stat. *See also* Fla. Admin. Code R. 67-60.009(2) (providing that "[a]ny person who is adversely affected by funding decisions under any competitive solicitation may only protest the results of the competitive solicitation process pursuant to the procedures set forth in section 120.57(3), F.S., and chapters 28-106 and 28-110, F.A.C.").¹³

38. Section 120.57(3)(f) governs protests to proposed actions of Florida Housing and provides that:

the burden of proof shall rest with the party protesting the proposed agency action. In a competitive-procurement protest, other than a rejection of all bids, proposals, or replies, the 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

Mr. Brooks from an officer position. As stated above, the greater weight of the evidence established that Mr. Brooks was never a CASL officer at any time relevant to the instant case.

¹³ There is no dispute regarding any of the parties' standing to participate in this proceeding.

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.

39. With regard to the applicable standard of proof, *Colbert v. Department of Health*, 890 So. 2d 1165, 1166 (Fla. 1st DCA 2004), defined the clearly erroneous standard to mean that “the interpretation will be upheld if the agency’s construction falls within the permissible range of interpretations. If, however, the agency’s interpretation conflicts with the plain and ordinary intent of the law, [then] judicial deference need not be given it.”

40. An agency action is “contrary to competition” when it unreasonably interferes with the objectives of competitive bidding. Those objectives have been described as follows:

[T]o 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 to favoritism and fraud in various forms; to secure the best values for [the public] at the lowest possible expense; and to afford an equal advantage to all desiring to do business with the [government], by affording an opportunity for an exact comparison of bids.

41. As for whether a proposed award would be arbitrary or capricious, a capricious action is taken without thought or reason. *Agrico Chem. Co. v. Dep’t of Env’t. Reg.*, 365 So. 2d 759, 763 (Fla. 1st DCA 1978). “An arbitrary decision is one that is not supported by facts or logic[.]” *Id.*

42. In assessing whether an agency has acted arbitrarily or capriciously, a tribunal evaluates “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’t. Reg.*, 553

So. 2d 1260, 1273 (Fla. 1st DCA 1989). “[I]f 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.”

43. Finally, a tribunal conducts the analyses described above via a *de novo* review. However, as explained by the Honorable F. Scott Boyd:

“[p]roceedings to challenge a competitive award are not simply a record review of the information that was before the agency. They remain ‘de novo’ in the sense that in the chapter 120 hearing the evidence adduced is not restricted to that which was earlier before the agency when making its preliminary decision. A new evidentiary record based upon the historical, objective facts is developed. *Asphalt Pavers, Inc. v. Dep’t of Transp.*, 602 So. 2d 558 (Fla. 1st DCA 1992).

Pinnacle Rio, LLC v. Fla. Hous. Fin. Corp., Case No. 14-1398BID (Fla. DOAH June 4, 2014), *rejected in part* (Fla. FHF June 13, 2014). “In this context, the phrase ‘de novo hearing’ is used to describe a form of intra-agency review. The [administrative law] judge may receive evidence, as with any formal hearing under section 120.57(1), but the object of the proceeding is to evaluate the action taken by the agency.” *State Contracting & Eng’g Corp. v. Dep’t of Transp.*, 709 So. 2d 607, 609 (Fla. 1st DCA 1998).

44. With regard to the instant case, the only issue is whether Blue CASL was required to list Mr. Brooks as a principal of CASL in its application for funding. If Blue CASL was required to do so, then its application is fatally flawed and must be rejected. *See HTG Village View, LLC v. Marquis Partners, LTD., and Fla. Hous. Fin. Corp.*, Case No. 18-2156BID (Fla. DOAH July 27, 2018), *rejected in part*, Case No. 2018-017BP (Fla. FHF Sept. 17, 2018)(finding that “[t]he greater weight of the evidence demonstrates that Marquis Partners did not properly disclose Mr. Wolfe on its Principal Disclosure Form and, as a result, it should not have been awarded the

additional five points for the advance review approval. Moreover, the omission of Mr. Wolfe as a manager of Cornerstone Marquis is a material deviation that cannot be waived. Thus, the evidence shows that Marquis Partners is not eligible for funding.”).

45. In other words, the failure to list Mr. Brooks would not be a minor irregularity that Florida Housing could waive. *See Fla. Admin. Code. R. 67-60.008* (providing that “[m]inor 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 any 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 [Florida Housing] or the public. Minor irregularities may be waived or corrected by [Florida Housing].”).

46. In support of its argument that Blue CASL’s application is ineligible for funding, Orchid Place asserts that Mr. Brooks, CASL’s COO, was an “officer” of CASL. As a result, Orchid Place argues that Blue CASL was required to disclose Mr. Brooks as a “principal” in its application. Orchid Place supports its argument by noting that CASL filed annual reports with the Department of State, before and after the application deadline, listing Mr. Brooks as an officer.

47. Rule 67-48.0075 is entitled “Miscellaneous Criteria,” and sections (8) and (9) thereof provide as follows:

(8) Unless otherwise stated in a competitive solicitation, disclosure of the Principals of the Applicant must comply with the following:

(a) The Applicant must disclose all of the Principals of the Applicant (first principal disclosure level). For Applicants seeking Housing Credits, the Housing Credit Syndicator/Housing Credit investor need only be disclosed at the first principal disclosure level and no other disclosure is required;

(b) The Applicant must disclose all of the Principals of all the entities identified in paragraph (a) above (second principal disclosure level);

(c) The Applicant must disclose all of the Principals of all of the entities identified in paragraph (b) above (third principal disclosure level). Unless the entity is a trust or a non-profit as defined in Section 42(h)(5)(C), subsection 501(c)(3) or subsection 501(c)(4) of the IRC, all of the Principals must be natural persons. A non-profit entity may be identified at the third principal disclosure level if the non-profit wholly owns a real estate development subsidiary identified at the second principal disclosure level; and

(d) If any of the entities identified in paragraph (c) above are a trust or a non-profit, the Applicant must disclose all of the Principals of the trust or a non-profit (fourth principal disclosure level), all of whom must be natural persons.

(9) Unless otherwise stated in a competitive solicitation, disclosure of the Principals of each Developer must comply with the following:

(a) The Applicant must disclose all of the Principals of the Developer (first principal disclosure level); and

(b) The Applicant must disclose all of the Principals of all the entities identified in paragraph (a) above (second principal disclosure level).

(c) A competitive solicitation may require disclosure of a natural person Principal of the Developer to meet Developer experience requirements.

48. As for the meaning of the term “principal,” chapter 67-48 is entitled “Competitive Affordable Multifamily Rental Housing Programs SAIL/HOME/HC,” and rule 67-48.002 defines many terms set forth in that

chapter. Of relevance to the instant case is rule 67-48.002(94)(a), which provides that, for a corporation, a “principal” is “each *officer*, director, executive director, and shareholder of the corporation.” (emphasis added)

49. While rule 67-48.002 does not define the term “officer,” guidance can be found in chapter 607, Florida Statutes, entitled the “Florida Business Corporation Act.” Section 607.08401 indicates that corporations in Florida use their bylaws to designate their officers¹⁴:

(1) A corporation shall have the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(2) The board of directors may appoint one or more individuals to act as the officers of the corporation. A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall assign to one of the officers responsibility for preparing minutes of the directors’ and shareholders’ meetings and for authenticating records of the corporation required to be kept pursuant to s. 607.1601(1) and (5).

(4) The same individual may simultaneously hold more than one office in a corporation.

¹⁴ Section 607.0850(3) defines a “director” or “officer” as “an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation’s request as a director or officer, manager, partner, trustee, employee, or agent of another domestic or foreign corporation, limited liability company, partnership, joint venture, trust, employee benefit plan, or another enterprise or entity. A director or officer is considered to be serving an employee benefit plan at the corporation’s request if the individual’s duties to the corporation or such plan also impose duties on, or otherwise involve services by, the individual to the plan or to participants in or beneficiaries of the plan. The term includes, unless the context otherwise requires, the estate, heirs, executors, administrators, and personal representatives of a director or officer.” As discussed above, Florida Law empowers corporations to use their bylaws to designate their officers.

50. As discussed above, CASL's bylaws mandate that CASL

shall have a President, a Vice President, a Secretary and Treasurer. Officers of the Corporation shall serve at the pleasure of the Board and shall serve without compensation. They shall be chosen by the Board of Directors and shall hold their offices from year to year and shall be elected or re-elected at the annual meeting of the Board of Directors.

Also, the bylaws require that all CASL checks be signed by two officers.

51. CASL's bylaws do not designate the COO as an officer. In addition, Mr. Brooks has no authority to sign or co-sign CASL checks.

52. Orchid Place argues that CASL's February 27, 2023, and April 2, 2024, filings with the Department of State conclusively establish that Mr. Brooks was a CASL "officer" within the meaning of rule 67-48.002(94)(a). However, the greater weight of the evidence established that those filings were erroneous and that Mr. Brooks has not been a CASL officer during any time period relevant to the instant case. Therefore, Blue CASL correctly omitted Mr. Brooks from its disclosure of principals.

53. Orchid Place cites *MJHS South Parcel, Ltd v. Florida Housing Finance Corporation*, Case No. 23-0903BID (Fla. DOAH May 31, 2023; Fla. FHF July 21, 2023), for the proposition that there must be "contemporaneous written evidence" to contradict CASL's Department of State filings identifying Mr. Brooks as an officer. This argument is unpersuasive given that the greater weight of the documentary and testimonial evidence demonstrated that the February 27, 2023, and April 2, 2024, filings were erroneous. To deem Blue CASL's application ineligible for funding under these circumstances would be clearly erroneous, contrary to competition, arbitrary or capricious, and/or contrary to Florida Housing's governing statutes, rules, policies, or RFA specifications. *See generally Heritage at Pompano Housing Partners, Ltd v. Fla. Hous. Fin. Corp., et al*, Case Nos. 14-1361 & 14-1362 (Fla. DOAH June 10, 2014; Fla. FHF June 13, 2014)

(concluding that “as to HTG’s challenge to the Heritage application because of a typographical error in the Division of Corporations’ records misnaming Heritage’s general partner, the evidence did not demonstrate that Florida Housing’s acceptance of the Heritage application was clearly erroneous, contrary to competition, arbitrary, or capricious. Instead, Heritage proved in convincing fashion that the typographical error was just that, and contrary to HTG’s claim, Heritage’s application did not name the ‘wrong corporate entity’ as general partner.”); *Madison Highlands, LLC, et al v. Fla. Hous. Fin. Corp, et al*, Case No. 18-1558 (Fla. DOAH June 6, 2018; Fla. FHF July 27, 2018) (finding that “the evidence shows that Ms. Cole was removed from the position of Treasurer on or about September 1, 2015, and she subsequently separated from the company in late 2015. Through sworn testimony and a corporate record, City Edge established that Mr. Hussey was Treasurer at the time of the application deadline, November 5, 2015.”).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Florida Housing Finance Corporation enter a final order dismissing the protest of HFH Orchid Place, LLC.

DONE AND ENTERED this 10th day of July, 2024, in Tallahassee, Leon County, Florida.

Garnett Chisenhall

G. W. CHISENHALL
Administrative Law Judge
DOAH Tallahassee Office

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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of July, 2024.

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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.