

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: HOUSTON STREET MANOR  
LIMITED PARTNERSHIP

FHFC CASE NO.: 2020-001VW

**ORDER GRANTING WAIVER OF RULES 67-48.023(5), 67-48.023(7), RFA  
2014-115 EXHIBIT C, PARAGRAPH 12(c), FINAL COST  
CERTIFICATION PACKAGE REQUIREMENT AS INCORPORATED BY  
RULE 67-48.023(7), AND 67-48.0072(17)(f), F.A.C.**

THIS CAUSE came on for consideration and final action before the Board of Directors of the Florida Housing Finance Corporation (the "Board") on March 6, 2020, pursuant to a "Petition for Waiver" ("Petition"). Florida Housing Finance Corporation ("Florida Housing") received the Petition on January 6, 2020 from Houston Street Manor Limited Partnership ("Petitioner" or "Houston Street"). On January 9, 2020, Florida Housing filed a Request for Additional Information. On February 11, 2020, Petitioner filed an Amended Petition for Waiver ("Amended Petition"). Notice of the Petition was published on January 7, 2020, in Volume 46, Number 4, of the Florida Administrative Register. Florida Housing received no comments regarding the Petitions. After careful review of the record and being otherwise fully advised in the premises, the Board hereby finds:

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

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HOUSING FINANCE CORPORATION

Thomas Klamary /DATE: 3/6/2020

2. Petitioner was selected to receive an allocation of competitive housing credits in RFA 2014-115 to assist in the construction of Houston Street Manor, a 72-unit elderly, affordable housing development in Jacksonville, Florida.

3. Rule 67-48.023(5), Fla. Admin. Code, states “[e]ach Housing Credit Development shall complete the final cost certification process as required in a competitive solicitation.”

4. Rule 67-48.023(7), Fla. Admin. Code, provides, in relevant part:

Final cost certification documentation shall be submitted by an Applicant to itemize all expenses incurred in association with construction or Rehabilitation of a Housing Credit Development, including Developer’s and General Contractor’s fees as described in rule 67-48.0072, F.A.C., along with the executed Extended Use Agreement, IRS Tax Information Authorization Form 8821 for all Financial Beneficiaries, a copy of the syndication agreement disclosing the rate and all terms, the required certified public accountant opinion letter, an unqualified audit report prepared by an independent certified public accountant, photographs of the completed Development, the monitoring fee, and documentation of the placed-in-service date as specified in the competitive solicitation. The Final Housing Credit Allocation will not be issued until such time as all items required by a competitive solicitation are received and processed by the Corporation.

5. Rule 67-48.0072(17), Fla. Admin. Code, states, in relevant part:

The General Contractor must meet the following conditions:

...

(f) Ensure that not more than 20 percent of the construction cost is subcontracted to any one entity, with the exception of a subcontractor contracted to deliver the building shell of a building of at least five (5) stories which may not have more than 31 percent of the construction cost in a subcontract, unless otherwise approved by the Board

for a specific Development. With regard to said approval, the Board shall consider the facts and circumstances of each Applicant's request, inclusive of construction costs and the General Contractor's fees; and

6. Exhibit C, Paragraph 12(c) of RFA 2014-115 (Form FCCAP),

provides:

In accordance with Rule 67-48.023, F.A.C., the Final Cost Certification Application Package (Form FCCAP), Rev. October 2014, shall be used by an Applicant to itemize all expenses incurred in association with construction or Rehabilitation of a Housing Credit Development, including Developer's and General Contractor's fees as described in Rule 67-48.0072, F.A.C., and shall be submitted to the Corporation by the earlier of the following two (2) dates:

(1) The date that is 75 Calendar Days after all the buildings in the Development have been placed in service, or

(2) The date that is 30 Calendar Days before the end of the calendar year for which the Final Housing Credit Allocation is requested.

The Corporation may grant extensions for good cause upon written request.

The FCCAP shall be completed, executed and submitted to the Corporation in both hard copy format and electronic files of the Microsoft Excel spreadsheets for the HC Development Final Cost Certification (DFCC) and the General Contractor Cost Certification (GCCC) included in the form package, along with the executed Extended Use Agreement and appropriate recording fees, IRS Tax Information Authorization Form 8821 for all Financial Beneficiaries, a copy of the syndication agreement disclosing the rate and all terms, the required certified public accountant opinion letter for both the DFCC and GCCC, an unqualified audit report prepared by an independent certified public accountant for both the DFCC and GCCC, photographs of the completed Development, the monitoring fee, and documentation of the placed-in-service date as specified in the Form FCCAP instructions. The Final Housing Credit Allocation will not be issued until such time as all required items are received and processed by the

Corporation. Form FCCAP, Rev. October 2014, is available on the Corporation's Website <http://www.floridahousing.org/Developers/MultiFamilyPrograms/Competitive/2014-115/RelatedForms/> (also accessible by clicking here).

7. Form FCCAP, incorporated by Rule 67-48.023(7), provides, in relevant part as follows:

The Certified Public Accountant performing the audit of the General Contractor's cost certification must send the following confirmation requests to the three largest dollar sub-contractors:

1. Confirm the construction contract amount;
2. Confirm any change orders;
3. Confirm what additional costs were incurred outside of the contract, if any;
4. Confirm the type of services provided (trade breakdown); and
5. Confirm amounts paid to date and balance(s), if any, to be paid.

In addition, the Certified Public Accountant must randomly select other sub-contractors sufficient in number (but in no event less than five), when taken together with the three largest dollar subcontractors, to account for at least 40% of the total contract construction cost, and verify the amounts paid to each sub-contractor by reviewing check copies, contract documents, change orders, and other supporting information to verify amounts included within the cost certification for each sub-contractor selected.

8. Petitioner asserts that the construction of the Development is complete, all final certificates of occupancy have been received and the Initial Occupancy Date has been met. Petitioner is currently in litigation with the general contractor regarding disputes over amounts owed under the construction contract. As a result of the litigation, Petitioner asserts that the general contractor is unwilling to execute

the GCCC necessary for the CPA to issue the unqualified opinion letter and audit report.

9. According to Petitioner, the CPA has been unable to obtain the general contractor's accounting records, sub-contractor bids, the completed GCCC forms, and lists of other costs or fees paid for the Development by the general contractor. Petitioner was able to provide the CPA with supporting documentation which enabled the CPA to determine amounts paid to each sub-contractor. The CPA was able to construct the GCCC from the supporting documentation. Confirmations were received from the three largest dollar sub-contractors and four of the five selected subcontractors (one less than the required five confirmations). Petitioner has agreed to send additional confirmation letters to the remaining sub-contractors until it receives the last remaining confirmation.

10. According to Petitioner, the CPA completed an "agreed-upon procedures" audit using established attestation standards. Petitioner utilized a second CPA to opine on the GCCC. The second CPA issued a GCCC Breakdown Schedule and Independent Auditors' Report which includes a qualified opinion. Petitioner asserts that the amounts subject to litigation with the general contractor will not affect the credit allocation to the Development as none of the disputed amount was included as eligible basis or costs for the cost certification. According to Petitioner, it has taken the most conservative approach with respect to the disputed costs.

11. Petitioner states that more than thirty-one (31) percent of the construction cost was sub-contracted to a single sub-contractor which was contracted to deliver the building shell of at least five stories, without prior approval. According to Petitioner, the shell contractor apparently received 37.1% of the amount originally owed under the construction contract. Petitioner asserts that it relied on the general contractor's experience in construction in accordance with GCCC rules. As stated previously, Petitioner was unable to review any of the general contractor's financials or sub-contractor bids and was unaware that the general contractor was violating Rule 67-48.0072(17)(f). Petitioner asserts that it is willing to (1) pay the GC Fee on the excess amount from its developer fee and (2) take no developer fee on the excess amount, in order to move forward with the Development.

12. 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.

13. 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.

14. Petitioner has demonstrated that the waiver is needed 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.

15. The Board finds that strict application of the above Rules and RFA provisions 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 Rules 67-48.023(5), 67-48.023(7), RFA 2014-115 Exhibit C Paragraph 12(c), Final Cost Certification Package Requirement as Incorporated by Rule 67-48.023(7), and 67-48.0072(17)(f), Fla. Admin. Code, is hereby **GRANTED** to:

1. Allow Petitioner to submit its Cost Certification with a GCCC that is not executed by the general contractor accompanied by a qualified opinion letter and audit report;
2. To audit four of the five selected sub-contractors, acknowledging that FHFC will not consider the GCCC final until the last confirmation is received or until all efforts have been exhausted; and
3. To allow Petitioner to pay a sub-contractor in excess of 31 percent to deliver the building’s shell under the condition that (1) the Developer pay any GC Fee paid on the excess amount out of its developer fee and that (2) the Developer take no developer fee on the excess amount.

**DONE and ORDERED** this 6th day of March, 2020.



Florida Housing Finance Corporation

By:

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke at the end.

Chair

**Copies furnished to:**

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Joint Administrative Procedures Committee  
Attention: Ms. Yvonne Wood  
[Joint.admin.procedures@leg.state.fl.us](mailto:Joint.admin.procedures@leg.state.fl.us)

**NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW**

**A PARTY WHO IS ADVERSELY AFFECTED BY THIS ORDER IS ENTITLED TO ADMINISTRATIVE 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.**