

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

In Re: Palmetto Leased Housing  
Associates 1, LLLP

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FHFC CASE NO.: 2020-034VW

**ORDER GRANTING VARIANCE FROM RULE 67-21.026(13)(g)**

THIS CAUSE came on for consideration and final action before the Florida Housing Finance Corporation pursuant to a “Petition for Waiver” (“Petition”). Florida Housing Finance Corporation (“Florida Housing”) received the Petition on June 17, 2020, from Palmetto Leased Housing Associates 1, LLLP (“Petitioner”). On June 23, 2020, Petitioner filed an Amended Petition. Notice of the Petition and Amended Petition was published on June 25, 2020, in Volume 46, Number 124 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, Florida Housing hereby finds:

1. Florida Housing has jurisdiction over the subject matter of this case and the parties hereto.
2. Petitioner successfully applied for non-competitive housing credits to assist in the construction of The Reef at Riviera, a 224-unit elderly, affordable housing development in Palmetto, Florida (the “Development”).
3. Rule 67-21.026(13), Fla. Admin. Code (2018), in relevant part, states:

(13) The General Contractor must meet the following conditions:

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W. M. Blumery / DATE: 7/17/2020

...

(g) Ensure that no construction cost is subcontracted to any entity that has common ownership or is an Affiliate of with the General Contractor or the Developer. For purposes of this paragraph, "Affiliate" has the meaning given it in subsection 67-21.002(5), F.A.C., except that the term "Applicant" therein shall mean "General Contractor."

4. Rule 67-21.002(2) (2018), Fla. Admin. Code, states:

(5) "Affiliate" means any person that:

(a) Directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Applicant or Developer;

(b) Serves as an officer or director of the Applicant or Developer or of any Affiliate of the Applicant or Developer;

(c) Directly or indirectly receives or will receive a financial benefit from a Development except as further described in rule 67-21.0025, F.A.C., or

(d) Is the spouse, parent, child, sibling, or relative by marriage of a person described in paragraph (a), (b) or (c), above.

5. Petitioner asserts that it submitted its application for non-competitive housing credits on or before May 7, 2019. Petitioner states that it executed a construction contract with CB-Dominium, LLC, a joint venture between Dominion Construction & Architectural Services, LLC and Current Builders Construction Services, Inc., a division of Current Builders, Inc, which will serve as the General Contractor of for the Development. Petitioner states that it sought bids for the five-story wood framed Development and received two complete bids, one from CB Structures, Inc. for \$6,086,052.00 and the other from SH Exterior, LLC for \$6,542,759.45. CB Structures, Inc. is an Affiliate company of Current Builders.

Petitioner asserts that the bid from SH Exteriors, LLC did not include dumpster and monument sign wall, which were included in the bid from CB Structures, Inc and that SH Exteriors, LLC is not bondable.

6. Petitioner would like to engage CB Structures, Inc. as the subcontractor because it had the lowest bid. Petitioner asserts that all labor and materials provided by CB Structures, Inc. will be at cost with no profit or fees built in with the exception of the costs incurred by CB Structures, Inc. to compensate a field superintendent to oversee the shell work. Additionally, Petitioner asserts that the cost of the shell work, including approximately \$113,000 for the field superintendent, concrete masonry and wood framing will be reduced to \$5,781,749.00, which is approximately 20% of the total construction cost of \$28,859,083 and the General Contractor fee on the costs subcontracted to CB Structures, Inc. will be limited to 7%.

7. According to Petitioner, CB Structures, Inc. is a division of Current Builders, Inc. with over 250 employees and over thirty years' experience in constructing shell structures for all types of developments. Petitioner states that CB Structures, Inc. has been serving as a third-party subcontractor for the construction of shells for numerous affordable housing developments since it was incorporated in 2004. Petitioner asserts that CB Structures, Inc. has the knowledge base to design the most cost-effective and sustainable structures for any specifications. In its

Petition, Petitioner included an affidavit from Michael Taylor, President of CB Structures, Inc. in which he confirms that all labor and materials provided by CB Structures, Inc. will be at cost with no mark-up, fee, or profit built into the price, except for the costs incurred for the compensation of a field superintendent hired to oversee the work performed by CB Structures, Inc. and to ensure that there will be no overlap in the duties of that field superintendent and the Superintendent for the General Contractor.

8. Petitioner seeks a waiver of Rule 67-21.026(13)(g) (2018), Fla. Admin. Code, to allow it to subcontract with an Affiliate of the General Contractor. Petitioner asserts that utilizing an affiliate of its General Contractor will increase operational oversight and an overall more efficient process. Petitioners agree to limit the General Contractor fees, overhead, and profit to no more than 7% on the CB Structures, Inc. amount and to 100% auditing by an independent Certified Public Accountant of all payments between the CB-Dominium, LLC, a joint venture between Dominion Construction & Architectural Services, LLC and Current Builders Construction Services, Inc., a division of Current Builders, Inc., and CB Structures, Inc. Petitioner also agrees that the independent Certified Public Accountant will audit and confirm all payments to the field superintendent and report on those costs within the General Contractors Cost Certification and confirm and/or

verify an additional 40% of the Development's construction costs per the Final Cost Certification Application Package.

9. Florida Housing finds that granting the waiver will not impact other participants in funding programs administered by Florida Housing, nor would it have a detrimental impact on Florida Housing or the Development.

10. 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.

11. Petitioner has demonstrated that the requested waiver is necessary and 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.

12. Florida Housing finds that strict application of the above Rule under these circumstances would violate principles of fairness, 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 67-21.026(13)(g), Fla. Admin. Code (2018), is hereby **GRANTED** to allow Petitioner to subcontract with an

Affiliate of the General Contractor, CB Structures, Inc. under the following conditions:

- A. Limit the General Contractor Fee on the costs subcontracted to CB Structures, Inc. to 7%;
- B. Provide that all labor and materials provided by CB Structures, Inc. will be at cost with no profit or fees built into those figures except that costs incurred by CB Structures, Inc. will include the compensation of a field superintendent hired to oversee the work performed by CB Structures, Inc. as long as those duties do not overlap with the duties of the general superintendent for the General Contractor;
- C. Have an independent Certified Public Accountant confirm and/or audit all payments between the Affiliated entities and verify 100% of the work performed by CB Structures, Inc. and the independent Certified Public Accountant will also confirm and/or audit all payments to the field superintendent hired by CB Structures, Inc. and will report those costs within the General Contractor Cost Certification; and
- D. Have an independent Certified Public Accountant also confirm and/or verify an additional 40% of the Development's costs per the Final Cost Certification Application Package.

DONE and ORDERED this 17th day of July, 2020.



Florida Housing Finance Corporation

By:

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.**