



March 10, 2022

Ms. Jean Salmonsens
Florida Housing Finance Corporation

Via Email Jean.Salmonsens@floridahousing.org

Re: Attached comment letter from NEI General Contracting

Dear Ms. Salmonsens:

We are in agreement with Option #2 in the attached letter from NEI General Contracting. We are currently constructing two LIHTC projects in Lakeland and St. Augustine. Our experiences include: 1. Subcontractors that submitted bids not moving forward to a contract, either because they do not have the capacity to perform the work in a timely manner or they have raised their previously quoted price to an amount that does not fit within the construction budget., and 2. Subcontractors failing to show up at the scheduled time to perform their services.

At that point the best option is to allow the general contractor to step in and perform the work themselves. First of all, they have a vested interest in performing the work as quickly as possible to allow timely completion of construction. Second, limiting their profit to 10% will generate cost savings as, based upon our recent experience, most subcontractors are adding at least a 15% profit on their subcontracts. Finally, remember the old saying, "Nobody will work as diligently as yourself." If the GC is performing subcontract work, they will make sure that it is built to the highest standards.

Thank you for giving us this opportunity to comment on the proposed Rules.

Sincerely,

A handwritten signature in black ink, appearing to read "M.A. Hartman".

Michael A. Hartman
Development Manager

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February 15, 2022

Re: February 17 workshop; suggested revisions to Rule 67-48.0072(17)(f)

The below proposed revisions to Rule 67-48.0072(17)(f) (the “Rule”) are being submitted to Florida Housing Finance Corporation (“FHFC”) for discussion and consideration during the Workshop for Rule Development scheduled for February 17, 2022. The proposed revisions are intended to clarify the ambiguity in the phrase “that is normally performed by subcontractors” found in the Rule. Work that one General Contractor may consider “normally performed” by a subcontractor may be different from work that a different General Contractor may considered “normally performed” by subcontractor. The size of the General Contracting firm, the type of project, the costs of the project, the scope of the work, the circumstances surrounding the need to self-perform work, and multiple other variables, all factor into what work *may be considered* “normally performed by subcontractors” or not.

It is common practice in the construction industry for General Contractors to self-perform work as a means to obtain a cost savings for a project and/or mitigate a potential cost overrun (which may result in the need to submit a change order to the owner/applicant). For instance, in rehab work and in new construction, there are small scopes of work that can more efficiently (both in cost and time) be done by a General Contractor’s own forces.

For example, in an occupied 250 unit rehab project, where a General Contractor commonly only has access to a limited amount of units at a time (e.g. 20 units), it is very difficult to find a subcontractor that will mobilize to the site thirteen (13) times to install items such as blinds or wire shelving. If a subcontractor can be located, the General Contractor, and in turn the owner/applicant, will be required to pay a premium of between 50% to 75% more as a result of the travel time and inefficiencies resulting from multiple mobilizations. While this type of work *may be considered* work that is “normally performed by a subcontractor,” the Rule’s prohibition on self-performance precludes a General Contractor from trying to achieve these types of cost savings on a project.

In addition, with the present volatility of material costs, it is becoming more common in the construction industry for General Contractors to break up larger scopes of work into smaller packages and handle the risk of supplying material to the installing subcontractor. While this can result in saving the project/owner/applicant money, it results in the need for a General Contractor to self-perform work by incurring additional labor costs in order to achieve those costs savings.

For example, in a wood framed project, the General Contractor can separate the rough carpentry labor, lumber package, truss package and window package into four (4) separate subcontracts. This eliminates one layer of mark up had all of the package been awarded to one subcontractor under a turnkey subcontract. To realize this cost savings though, the General Contractor now must supply general labor to accept deliveries, store materials, move materials onsite, count product, etc. This is General Contractor self-performed work. Under the present Rule, the General Contractor is arguably prohibited from performing this type of work, as it could be performed by a subcontractor under a turnkey subcontract.

Further, the manner in which the present Rule, as written, is being interpreted, and FHFC's position that a General Contractor may not be entitled to a mark-up on its self-performed portion of the work in the above scenario, has the unintended consequence of General Contractors not wanting to act in the best financial interest of the project. If a General Contractor is not entitled to mark-up on self-performed work, there is no incentive for the General Contractor take the above steps, as taking the above steps would actually result in a reduction of the General Contractor's fee. If the General Contractor can demonstrate its self-performing of work saved the project/owner/applicant money on a specific scope of work, it should be allowed to self-perform the work and entitled to its mark-up.

It is important to note that most often than not, General Contractor self-perform work is done within the Guaranteed Maximum Price ("GMP") established in the prime contract. Allowing the General Contractor to include its mark-up does not result in any additional cost to the owner/applicant or FHFC other than what was already agreed and underwritten. On two of NEI's most recent projects with self-perform labor there was actually credits to the owner/applicant at the conclusion of the projects at approximately \$150,000 each.

An additional consideration is that partial scopes of work are often necessary in order for a General Contractor to maintain schedule and/or save time. Unfortunately, it is common on a construction project where a subcontractor does not timely maintain its schedule, fails to show up or even goes out of business. In these scenarios, if a General Contractor has its own labor forces, it is more efficient in both time and cost for the General Contractor to complete the subcontractor's scope of work. Under the Rule as written, the General Contractor cannot self-perform this work without stopping to submit a request for a waiver, and if a waiver is granted, it is commonly granted with the prohibition on the General Contractor earning any mark-up on the self-performed work. As stated above, ultimately there is no increased cost to the owner/applicant and FHFC as most General Contractors will back-charge the subcontractor the cost of the work self-performed by the General Contractor reducing the overall value of the subcontract. As the work had to be performed, either by the subcontractor including his mark-up in the subcontract, by the General Contractor, it seems inequitable for the General Contractor to be deprived of its entitlement to mark-up, especially in light of the fact that the inclusion of mark-up would not increase the cost to the owner/applicant or FHFC.

One final consideration, it is common practice in the general contracting industry for General Contractors to self-perform work, such as punchlist work, utilization of an elevator operated, general labor and clean up. While these categories of work are normally not subcontracted, there is no guidance in the Rule as to whether or not FHFC will treat this type of work as improper General Contractor self-performed work or work "normally performed" by a subcontractor. The proposed Rule revisions are intended to provide much needed clarity to General Contractors, as well as provide General Contractors an incentive to act in the best financial and overall interest of a project by allowing them to perform a limited amount of self-performed work.

Proposed Revisions to Rule 67-48.0072(17)(f)

Existing Rule:

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

(f) Ensure that no construction or inspection work that is normally performed by subcontractors is performed by the General Contractor;

Option 1:

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

(f) Ensure that no General Contractor shall self-perform more than ten percent (10%) of the actual costs of any construction or inspection work ~~that is normally performed by subcontractors is performed by the General Contractor.~~ The General Contractor's mark-up on any self-performed work shall be limited to a maximum of ten percent (10%) of the actual construction costs of the self-performed work;

Option 2:

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

(f) Ensure that no ~~construction or inspection work that is normally performed by subcontractors is performed~~ self-performed work is completed by the General Contractor, except in the following circumstances:

1. During the course of the project, a subcontractor becomes insolvent or is unable to timely perform the work in accordance with the General Contractor's construction schedule;

2. The self-performance of work by the General Contractor will result in a cost savings to the project;

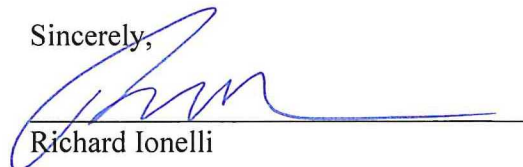
3. The self-performance of work by the General Contractor is work that is common to support other trades, for example general labor, clean up, punch list, equipment operators; or

4. The actual construction cost of the work to be self-performed by the General Contractor is under \$10,000.00.

The General Contractor shall maintain and submit documentation to establish each of the above exceptions and include such documentation in the GC Cost Certification. The total cost of all work self-performed by a General Contractor shall not be more than ten percent (10%) of the total actual construction costs. The General Contractor's mark up in any self-performed work shall be limited to a maximum of ten percent (10%) of the actual construction costs of the self-performed work.

NEI General Contracting appreciates the time and attention FHFC has already given to the interpretation of this Rule, and looks forward to discussing the above during the upcoming Workshop.

Sincerely,



Richard Ionelli