

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

LAS BRISAS ESTATES LLC,

Petitioner,
vs.

FHFC Case No.: 2018-043BP
RFA No. 2017-112
Application No. 2018-098C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

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

Petitioner, LAS BRISAS ESTATES LLC (“Las Brisas”), 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 and scoring decisions of Respondent, FLORIDA HOUSING FINANCE CORPORATION (“Florida Housing”) to award funding to responsive bidders pursuant to Request for Application 2017-112 Housing Credit Financing for Affordable Housing Developments Located in Miami Dade County (the RFA”). In support Las Brisas provides as follows:

1. Las Brisas is a Florida limited liability company in the business of providing affordable housing. Las Brisas is located at 7735 NW 146 Street, Suite 306, Miami Lakes, FL 33061

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 preserving and rehabilitating much needed affordable housing. Florida Housing's address is 227 North Bronough Street, Suite 500, Tallahassee, Florida 32301.

3. On October 6, 2017, Florida Housing issued the RFA which offered funding as follows:

Under this RFA, Florida Housing Finance Corporation (the Corporation) expects to have up to an estimated \$5,803,694 of Housing Credits available for award to proposed Developments located in Miami-Dade County.

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

5. On December 8, 2017, Las Brisas submitted its Application in response to the RFA that included information concerning the rehabilitation of a 110 unit apartment complex in Dade County, Florida, named Las Brisas. Through the Application, Las Brisas was requesting \$2,561,000 in tax credit funding. Las Brisas satisfied all requirements of the RFA. Florida Housing received eight applications in response to the RFA.

6. As the owner of a project seeking funding through the RFA, Las Brisas is substantially affected by the review, scoring, and ranking of the responses to the RFA. The results of this and related proceedings may affect Las Brisas' ability to obtain funding through the RFA.

7. Consistent with the primary mission and goal of the RFA, Las Brisas will provide much needed affordable housing in Dade County. Without the funds provided by the RFA, Las Brisas will be unable to provide this much needed housing. Accordingly, Las Brisas' substantial interests are affected by the decisions made by Florida Housing.

8. The designated Review Committee met and considered the Applications responding to the RFA. At the meeting the Review Committee orally listed and manually input the scores for each section of each RFA Response and ultimately made recommendations to the

Board of Directors for their consideration. The Review Committee consisted of Florida Housing staff. During the meeting, the Review Committee determined that Las Brisas' Application was eligible however not selected for funding. Applications 2018-102C (Paradise Lakes Apartments), and 2018-076C (The Palms of Bella Vista, Ltd.), were selected for tentative funding ahead of Los Brisas.

9. On May 14, 2018, Florida Housing's Board of Directors accepted the Review Committee's ranking and funding.

10. On May 9, 2018, Las Brisas timely filed its Notice of Intent to Protest. This Formal Written Protest is being timely filed and Florida Housing has waived the bid protest bond requirement for the RFA.

11. As a Developer of affordable housing in need of supplemental funding, Las Brisas' substantial interests are affected by Florida Housing's decision not to award the necessary funding pursuant to the RFA. In this action Las Brisas is challenging the scoring of the Paradise and Palms Applications. If successful in its challenge Las Brisas will move into the funding range.

(Paradise Lake Apartments)

12. The RFA at page 2 requires an Applicant to select a Demographic Commitment. In its Application Paradise selected the Family Demographic.

13. At Section Four A, Section 7.a the RFA further requires an Applicant to provide information concerning Site Control. In response to this section the Paradise submitted an Agreement for Purchase and Sale as Attachment 8, by which Applicant as "Buyer" intends to buy land for the proposed development.

14. At Paragraph 31.(d) of the Purchase and Sale Agreement states:

“For any residential use to be constructed on the Property, Buyer agrees to pursue Building Approvals for senior citizen affordable housing use only.”

15. To provide housing for senior citizens, Paradise should have selected the Demographic Commitment of “Elderly”. The fact that the Applicant has indicated to Florida Housing a development for the Family Demographic renders Applicant’s land purchase agreement voidable by Seller. Alternatively the Purchase and Sales Agreement has a contingency in it which makes the provision of housing in the selected demographic impossible. Accordingly the Purchase and Sale Agreement cannot be used as an eligible contract.

16. Paradise cannot change its Demographic Commitment to Elderly and selecting the wrong demographic commitment is not a Minor Irregularity.

(Palms of Bella Vista)

17. The RFA Section Four A.7b requires the following:

“The Applicant must demonstrate the following Ability to Proceed elements as of Application deadline, for the entire proposed development site, **including all Scattered Sites**, if applicable, as outlined below.”

18. Section Four A.7b.(1) goes on to provide:

“The Applicant must demonstrate the status of site plan or plat approval as of the Application Deadline, for the entire proposed Development site, by providing, as Attachment 9 to Exhibit A, the applicable properly completed and executed verification form:

- (a) The Florida Housing Finance Corporation Local Government Verification of Status of Site Plan Approval for Multifamily Developments form (Form Rev. 08-16):...”

19. The Palms proposed Development consists of Scattered Sites (2 sites). Palms provided at 5.b of Exhibit A an address for each site as follows:

- On SW 336 Street, 1200 ft west of the intersection of SW 336 Street and SE 12 Avenue, Homestead
- On SE 12 Ave, at intersection of SW 336 Street and SE 12 Avenue, Homestead

20. Palms provided the required documentation only for one of its two scattered sites: “On SE 12 Ave, at intersection of SW 336 Street and SE 12 Avenue, Homestead”. At second address is not referenced on the form submitted and a second form is not provided.

21. The RFA states on p. 32:

A.7b.(2) Appropriate Zoning

“The Applicant must demonstrate that as of the Application Deadline, the entire proposed Development site is appropriately zoned and consistent with local land use regulations... by providing, as Attachment 10 to Exhibit A, the applicable properly completed and executed verification form:

- (a) The Florida Housing Finance Corporation Local Government Verification that Development is Consistent with Zoning and Land Use Regulations form (Form Rev. 08-16);...”

22. Palms provided the required form only for one of the two scattered sites: “On SE 12 Ave, at intersection of SW 336 Street and SE 12 Avenue, Homestead”. The second address is not referenced on the form submitted and a second form is not provided.

23. To confirm that the forms provided to Florida Housing by Palms in fact only apply to one of the two scattered sites. Documentation from the City of Homestead is attached. The City processed site plan and zoning verification forms for each of the two sites separately. Therefore, it is confirmed that the forms provided by Paradise as their Attachment 9 and 10 only apply to one site (only the secondary site which is intended to provide 48 of the proposed development’s 140 units).

24. Material issues to be resolved:

- a. Whether the review of the Palms and Paradise Applications was consistent with the RFA requirements, or Florida Housing policies.
- b. Whether Florida Housing's review and actions taken concerning the Palms and Pines Applications was arbitrary or capricious, clearly erroneous or contrary to competition.
- c. Whether Florida Housing's review of all Applications submitted in response to the RFA was arbitrary, capricious, clearly erroneous or contrary to competition.

WHEREFORE, Las Brisas requests that a settlement meeting be scheduled and if settlement is not reached, a hearing be scheduled and ultimately an order be entered determining that Florida Housing's review and scoring of Palms and Paradise Applications were not consistent with 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 funding to Las Brisas.

Respectfully submitted,

CARLTON, FIELDS, JORDEN BURT, P.A.

/s/ Michael P. Donaldson

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