



March 28, 2022

Re: March 23rd, 2022 workshop; suggested revisions to Rule 67-48.0072(17)(f) – Follow up Comments

The below proposed revisions to Rule 67-48.0072(17)(f) (the “Rule”) are being submitted to Florida Housing Finance Corporation (“FHFC”) as a follow up public comment to the workshop for Rule Development on March 25, 2022. The proposed comments are intended to provide support to the FHFC suggested revisions to rule 67-48.0072(17)(f) with one important change.

(17)(f) Ensure that no construction or inspection work is performed the General Contractor, apart from the General Contractor’s duties to manage and control the construction of the Development, except that the General Contractor may self-perform work of a de minimis amount, defined for purposes of this paragraph as the lesser of \$100,000 or 5 percent of the construction contract;

As confirmed in the rule workshop on March 23rd, 2022 and the prior public comments, the proposed rule is welcomed by most with the exception of the cap on the total allowed self-performed work of \$100,000. This cap reduces and almost eliminates the possibility of cost and time savings.

Based on our experience we believe the rule revision should be limited to \$750,000 or 5 percent of the total construction contract whichever is less. The following comments and examples will help support the higher limit on self-perform work.

The goal of the General Contractor (“GC”) and Developer should always be to save time and reduce project costs. By self-performing work, the GC can almost accomplish this goal. If the GC is required to incur the legal fees and time impacts associated with submitting a petition (or multiple petitions) for self-performed work once the \$100,000 cap presently contemplated is exceeded (which could occur multiple times on a single project), a GC will not be incentivized to achieve these costs savings. As discussed below, there are certain aspects of work that a GC knows it may self-perform (i.e., unskilled general labor for cleaning). With that said, in many instances, the need for a GC to self-perform work occurs without advance notice (i.e., primarily situations where a subcontractor does not perform as expected). GCs do not have the luxury of seeking advance approval through the petition process. Even submitting an after-the-fact Petition, it is common knowledge that the FHFC will routinely not allow a GC to seek its fees (or at least the full amount of its fees) associated with seeking a waiver through the Petition process. A “de minimis” limit of \$100,000 does not incentivize GCs from achieving the goal of reduced project costs and time. The present Rule, just like the proposed revision, does not account for real world contracting situations, and separates FHFC projects, from all other construction projects to the detriment of FHFC, Developers and GCs. The Petition process is onerous, time consuming, and expensive for GC and Developers. While the proposed revision is a positive



step in the right direction, the “de minimus” amount does not adequately address or resolve the issue being faced by Developers and GC’s. FHFC already has multiple safeguards in place to avoid GCs from taking advantage of a higher monetary threshold through its substantial cost certification process. Without adequately resolving this issue, in an effort to avoid the legal costs associated with submitting a Petition and to obtain the full value of its fees, GC’s will still be inclined to simply pay a higher cost to a subcontractor, thus, increasing the value of the project. This is the opposite goal that FHFC seeks to achieve.

More specifically, most projects require a GC to supply at least one fulltime unskilled general laborer for cleaning, trash out, securing good etc. The cost for general labor varies from location to location and from GC to GC. But for the most part the hourly labor costs \$15 to \$25 per hour. On top of the labor cost there are fringe benefits, that per the US Bureau of Labor are approximately 43% of the direct labor cost. So, on average, the range for general labor is \$22 to \$36 per hour. Based on this rate, one full time laborer’s average cost for a 15-month project is \$75,342. With the \$100,000 cap, this would leave very little for any other cost savings or unforeseen conditions.

Part of a general contractor’s responsibility is to be sure a project is clean and safe. Part of this process requires general labor provided by the general contractor. This is required as many times the subcontractors will not take ownership of clean up even if their contract includes it. In cases like this the GC completes the work and “back charges” the subcontractor. In this case there is zero increase in cost to the owner or the GC.

On many renovation projects unforeseen conditions arise that repeat per phase but are unquantifiable until the entire condition is exposed. On a past project this happened with fire stopping demising walls. At each phase of the project the condition had to be uncovered, reviewed and quantified. When priced as a whole the lowest subcontractor’s pricing was \$395,000. The contractor was able to complete this work for \$148,000. Besides the cost savings, this scenario did not allow time for the sub to review, price, submit a change and get approval. The GC was able to move quickly and avoid any delays.

In many cases multiple de minimus scopes added together exceed \$100,000 even on smaller projects. For example, by having one fulltime lead carpenter onsite we have been able to absorb multiple smaller tasks. On one project we have soffit blocking, window sill modifications and closet door framing tasks that were all unforeseen conditions. Individually these are not tasks that could be bought out economically through a subcontractor. By having this fulltime carpenter, we, as the GC, were able to have this employee complete these tasks while also completing smaller base scope items like wire shelving and door install. Essentially completing the unforeseen work at little or no additional cost.

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 construction or inspection work is performed the General Contractor, apart from the General Contractor's duties to manage and control the construction of the Development, except that the General Contractor may self-perform work, defined for purposes of this paragraph as 5 percent of the construction contract up to a maximum of \$750,000;

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
Vice President of Southeast Operations
NEI General Contracting Inc.