STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AMBAR TRAIL, LTD,

Petitioner,

vs. Case No. 20-1138BID

FLORIDA HOUSING FINANCE CORPORATION,

Respondent,

and

NARANJA LAKES HOUSING PARTNERS, LP,
AND SLATE MIAMI APARTMENTS, LTD.,

Intervenors.
_____/

SIERRA MEADOWS APARTMENTS, LTD.,

Petitioner,

vs. Case No. 20-1139BID

FLORIDA HOUSING FINANCE CORPORATION,

Respondent,

and

NARANJA LAKES HOUSING PARTNERS, LP,
AND SLATE MIAMI APARTMENTS, LTD.,

Intervenors.
_____/

QUAIL ROOST TRANSIT VILLAGE IV, LTD.,

Petitioner,

vs. Case No. 20-1140BID

FLORIDA HOUSING FINANCE CORPORATION,

Respondent,

and

NARANJA LAKES HOUSING PARTNERS, LP,
AND SLATE MIAMI APARTMENTS, LTD.,

Intervenors.
_____/

PARC GROVE, LLC,

Petitioner,

vs. Case No. 20-1141BID

FLORIDA HOUSING FINANCE CORPORATION,

Respondents,

and

NARANJA LAKES HOUSING PARTNERS, LP,
AND HARBOUR SPRINGS, LLC.,

Intervenors.
_____/

RECOMMENDED ORDER OF DISMISSAL

A telephonic hearing was conducted in this case on March 23, 2020, before James H. Peterson, III, Administrative Law Judge with the Division of Administrative Hearings (DOAH). The telephonic hearing was convened to consider the Joint Motion to Dismiss, filed on March 13, 2020, by Naranja

Lakes Housing Partners, LP, and Slate Miami Apartments, Ltd., joined by Florida Housing Finance Corporation (Florida Housing). By agreement of the parties, the telephonic hearing constituted the first day of the final hearing in this case. As this Recommended Order recommends the dismissal of Case Numbers 20-1138BID, 20-1139BID, and 20-1140BID in the above-styled consolidated cases, and given the fact that the Petitioner in the remaining consolidated case, Case Number 20-1141BID, filed a Notice of Voluntary Dismissal on March 24, 2020, no further days of final hearing before DOAH are anticipated in this case.

APPEARANCES

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STATEMENT OF THE ISSUE

Whether the Petitions filed by Ambar Trail, Ltd.; Sierra Meadows Apartments, Ltd.; and Quail Roost Transit Village IV, Ltd., should be dismissed for lack of standing.

PRELIMINARY STATEMENT

In February 2020, Petitioners Ambar Trail, Ltd. (Ambar Trail); Sierra Meadows Apartments, Ltd. (Sierra Meadows); and Quail Roost Transit Village IV, Ltd. (Quail Roost) filed separate formal written protests and petitions for administrative hearings, alleging that the entire Request for Applications (RFA) 2019-112 and the preliminary funding award decisions issued for that RFA by the Florida Housing should be rescinded. On March 2,

2020, Florida Housing forwarded the petitions, together with another petition filed by Parc Grove, LLC (Parc Grove),[1] to DOAH.

Following assignment of the cases to the undersigned to conduct the requested administrative hearings, on March 5, 2020, based on an Unopposed Motion to Consolidate, an Order of Consolidation was entered consolidating the four petitions. The style of the Order of Consolidation, and filings thereafter, erroneously identify the preliminarily awarded bidders, who are technically intervenors, as respondents. Therefore, the style of this case is corrected as reflected above, to properly show that the preliminarily awarded bidders are "Intervenors," aligned with Florida Housing in each case, as opposed to "Respondents."

After a telephonic scheduling conference with the parties, an Order on Telephonic Scheduling Status Conference (Scheduling Order) was entered on March 6, 2020, together with a Notice of Hearing and Prehearing Instructions with provisions for expedited discovery. In accordance with the Scheduling Order, a Joint Motion to Dismiss was filed on March 13, 2020, by Naranja Lakes Housing Partners, LP (Naranja Lakes), and Slate Miami Apartments, Ltd. (Slate Miami), joined by Florida Housing, challenging the standing of Ambar Trail, Sierra Meadows, and Quail Roost (collectively the Petitioners). Thereafter, on March 20, 2020, a Response to the Joint Motion to Dismiss was filed.

On March 23, 2020, a telephonic hearing was held during which the Joint Motion to Dismiss, the Response to the Motion to Dismiss, the Petitions filed by the Petitioners, and arguments of counsel were considered and discussed. At the end of those discussions, the undersigned announced that the Joint

[1] The Petition filed by Parc Grove challenged Florida Housing's preliminary funding awards, but did not seek to rescind the RFA.

Motion to Dismiss was well taken and that a favorable written Order thereon would be entered.

In accordance with the Scheduling Order and agreement of the parties, the telephonic hearing held March 23, 2020, constituted the first day of the administrative hearing in the consolidated cases. The proceedings were recorded. At the time of that telephonic hearing, because the Petition filed by Parc Grove was still pending and not subject to the Joint Motion to Dismiss, it was anticipated that a second day of hearing, as scheduled in the Notice of Hearing in this case, would be held on April 13, 2020. However, on March 24, 2020, Parc Grove filed a Notice of Voluntary Dismissal of its Petition. Therefore, because this Recommended Order of Dismissal recommends the dismissal of the remaining Petitions filed by the Petitioners, no further dates for the administrative hearing before DOAH in these cases have been scheduled.

FINDINGS OF FACT[2]

1. Florida Housing is a public corporation created under Florida law to administer the governmental function of financing or refinancing affordable housing and related facilities in Florida.

2. Florida Housing administers a competitive solicitation process to implement the provisions of the housing credit program, under which developers apply and compete for funding for projects in response to RFAs developed by Florida Housing.

3. The RFA in this case was specifically targeted to provide affordable housing in Miami-Dade County, Florida. The RFA introduction provides:

[2] As this Recommended Order of Dismissal is based upon a motion to dismiss, the factual allegations of the three Petitions filed by the Petitioners in this consolidate case are accepted as true, and the Findings of Fact are derived from the four corners of those Petitions, see *Madison Highlands. LLC v. Florida Housing Finance Corp.,* 220 So. 3d 467, 473 (Fla. 5th DCA 2017), and facts that are not otherwise in dispute.

> This Request for Applications (RFA) is open to Applicants proposing the development of affordable, multifamily housing located in Miami-Dade County.
>
> Under this RFA, Florida Housing Finance Corporation (the Corporation) expects to have up to an estimated $7,195,917 of Housing Credits available for award to proposed Developments located in Miami-Dade County.

4. After Florida Housing announced its preliminary funding award decisions for RFA 2019-112 for Housing Credit Financing for Affordable Housing Developments Located in Miami-Dade County, each of the Petitioners filed Petitions challenging the decisions.

5. Petitioners do not allege that Florida Housing improperly scored or evaluated the applications selected for funding, nor do they contend that Petitioners' applications should be funded. Instead, Petitioners allege that the evaluation was fundamentally unfair and seeks to have the entire RFA rescinded based on alleged improprieties of one responding entity and its affiliates.

6. Petitioners claim that the evaluation process was fundamentally unfair is based entirely on allegations that several entities associated with Housing Trust Group, LLC (HTG), combined to submit 15 Priority I applications in contravention of the limitation in the RFA on the number of Priority I applications that could be submitted. Even assuming Petitioners' assertions are correct, there is no scenario in which Petitioners can reach the funding range for this RFA.

7. In order to break ties for those applicants that achieve the maximum number of points and meet the mandatory eligibility requirements, the RFA sets forth a series of tie-breakers to determine which applications will be awarded funding. The instant RFA included specific goals to fund certain types of developments and sets forth sorting order tie-breakers to

distinguish between applicants. The relevant RFA provisions are as follows:

> **1. Goals**
>
> a. The Corporation has a goal to fund one (1) proposed Development that (a) selected the Demographic Commitment of Family at questions 2.a. of Exhibit A and (b) qualifies for the Geographic Areas of Opportunity/SADDA Goal as outlined in Section Four A. 11. a.
> b. The Corporation has a goal to fund one (1) proposed Development that selected the Demographic Commitment of Elderly (Non-ALF) at question 2.a. of Exhibit A.
>
> *Note: During the Funding Selection Process outlined below, Developments selected for these goals will only count toward one goal.
>
> **2. Applicant Sorting Order**
>
> All eligible Priority I Applications will be ranked by sorting the Applications as follows, followed by Priority II Applications.
>
> a. First, from highest score to lowest score;
> b. Next, by the Application's eligibility for the Proximity Funding Preference (which is outlined in Section Four A.5.e. of the RFA) with Applications that qualify for the preference listed above Applications that do not qualify for the preference;
> c. Next, by the Application's eligibility for the Per Unit Construction Funding Preference which is outlined in Section Four A.lO.e. of the RFA (with Applications that qualify for the preference listed above Applications that do not qualify for the preference);
> d. Next, by the Application's eligibility for the Development Category Funding Preference which is outlined in Section Four A.4.(b)(4) of the RFA (with Applications that qualify for the preference

> listed above Applications that do not qualify for the preference);
> e. Next, by the Applicant's Leveraging Classification, applying the multipliers outlined in Item 3 of Exhibit C of the RFA (with Applications having the Classification of A listed above Applications having the Classification of B);
> f. Next, by the Applicant's eligibility for the Florida Job Creation Funding Preference which is outlined in Item 4 of Exhibit C of the RFA (with Applications that qualify for the preference listed above Applications that do not qualify for the preference); and
> g. And finally, by lottery number, resulting in the lowest lottery number receiving preference.

8. This RFA was similar to previous RFAs issued by Florida Housing, but included some new provisions limiting the number of Priority I applications that could be submitted.

9. Specifically, the RFA provided:

> Priority Designation of Applications
>
> Applicants may submit no more than three (3) Priority I Applications. There is no limit to the number of Priority II Applications that can be submitted; however, no Principal can be a Principal, as defined in Rule Chapter 67-48.002(94), F.A.C., of more than three (3) Priority 1 Applications.
>
> For purposes of scoring, Florida Housing will rely on the Principals of the Applicant and Developer(s) Disclosure Form (Rev. 05-2019) outlined below in order to determine if a Principal is a Principal on more than three (3) Priority 1 Applications. If during scoring it is determined that a Principal is disclosed as a Principal on more than three (3) Priority I Applications, all such Priority I Applications will be deemed Priority II.

> If it is later determined that a Principal, as defined in Rule Chapter 67-48.002(94), F.A.C., was not disclosed as a Principal and the undisclosed Principal causes the maximum set forth above to be exceeded, the award(s) for the affected Application(s) will be rescinded and all Principals of the affected Applications may be subject to material misrepresentation, even if Applications were not selected for funding, were deemed ineligible, or were withdrawn.

10. The Petitioners all timely submitted applications in response to the RFA.

11. Lottery numbers were assigned by Florida Housing, at random, to all applications shortly after the applications were received and before any scoring began.

12. Lottery numbers were assigned to the applications without regard to whether the application was a Priority I or Priority II.

13. The RFA did not limit the number of Priority II Applications that could be submitted.

14. Review of the applications to determine if a principal was a principal on more than three Priority 1 Applications occurred during the scoring process, well after lottery numbers were assigned.

15. The leveraging line, which would have divided the Priority I Applications into Group A and Group B, was established after the eligibility determinations were made. All applications were included in Group A. There were no Group B applications. Thus, all applications were treated equally with respect to this preference.

16. The applications were ultimately ranked according to lottery number and funding goal.

17. If Florida Housing had determined that an entity or entities submitted more than three Priority I Applications with related principals, the relief set forth in the RFA was to move those applications to Priority II.

18. Florida Housing did not affirmatively conclude that any of the 15 challenged applications included undisclosed principals so as to cause a violation of the maximum number of Priority I Applications that could be submitted.

19. All of the applications that were deemed eligible for funding, including the Priority II Applications, scored equally, and met all of the funding preferences.

20. After the applications were evaluated by the Review Committee appointed by Florida Housing, the scores were finalized and preliminary award recommendations were presented and approved by Florida Housing's Board. Consistent with the procedures set forth in the RFA, Florida Housing staff reviewed the Principal Disclosure Forms to determine the number of Priority I Applications that had been filed by each applicant. This review did not result in a determination that any applicant had exceeded the allowable number of Priority I Applications that included the same principal.

21. One of the HTG Applications (Orchid Pointe, App. No. 2020-148C) was initially selected to satisfy the Elderly Development goal. Subsequently, three applications, including Slate Miami, that had initially been deemed ineligible due to financial arrearages were later determined to be in full compliance and, thus, eligible as of the close of business on January 8, 2020. The Review Committee reconvened on January 21, 2020, to reinstate those three applications. Slate Miami was then recommended for funding.

22. The Review Committee ultimately recommended to the Board the following applications for funding: Harbour Springs (App. No. 2020-101C), which met the Geographic Areas of Opportunity/SADDA Goal; Slate Miami (App. No. 2020-122C), which met the Elderly (non-ALF) Goal; and Naranja Lakes (App. No. 2020-117C), which was the next highest-ranked eligible Priority I Application.

23. The Board approved the Committee's recommendations at its meeting on January 23, 2020, and approved the preliminary selection of Harbour Springs, Slate Miami, and Naranja Lakes for funding.

24. The applications selected for funding held Lottery numbers 1 (Harbour Springs), 2 (Naranja Lakes), and 4 (Slate Miami).

25. Petitioners' lottery numbers were 16 (Quail Roost), 59 (Sierra Meadows) and 24 (Ambar Trail).

26. The three applications selected for funding have no affiliation or association with HTG, or any of the entities that may have filed applications in contravention of the limitation in the RFA for Priority I applications.

27. The applications alleged in the Petitions as being affiliated with HTG received a wide range of lottery numbers in the random selection, including numbers: 3, 6, 14, 19, 30, 38, 40, 42, 44, 45, 49, 52 through 54, and 58.

28. If Petitioners prevailed in demonstrating an improper principal relationship between the HTG applications, the relief specified in the RFA (the specifications of which were not challenged) would have been the conversion of the offending HTG applications to Priority II applications. The relief would not have been the removal of those applications from the pool of applications, nor would it have affected the assignment of lottery numbers to any of the applicants, including HTG.

29. The Petitions do not allege any error in scoring or ineligibility with respect to the three applications preliminarily approved for funding.

CONCLUSIONS OF LAW

30. Florida Housing is a public corporation organized pursuant to chapter 420, Part F, Florida Statutes, to administer the financing of affordable housing in Florida. Florida Housing is designated as the housing credit agency for Florida and has the responsibility to competitively allocate and distribute low income housing tax credits to help fund affordable housing

developments.[3] Because the demand for tax credits provided by the federal government far exceeds the available supply, qualified affordable housing developments must compete for this funding. *See Ybor III. Ltd. v. Florida Housing Finance Corp*, 843 So. 2d 344, 345 (Fla. 1st DCA 2003).

31. Section 420.507(48) authorizes Florida Housing to allocate tax credits and other funding by means of a request for proposal or other competitive solicitation. Florida Housing has adopted Florida Administrative Code Rule Chapter 67-60 to govern the competitive solicitation process for tax credits and other programs administered by Florida Housing. The adopted rules incorporate the bid protest provisions of section 120.57(3), Florida Statutes, for resolving disputes related to the allocation of tax credits. *See* Fla. Admin. Code rule 67-60.001.

32. The competitive process begins with Florida Housing issuing an RFA. *See* Florida Administrative Code Rule 67-60.003.

33. In an administrative proceeding, standing is a jurisdictional threshold issue equivalent to assessing subject matter jurisdiction. *See Abbott Lab. v. Mylan Pharm., Inc.,* 15 So. 3d 642 (Fla. 1st DCA 2009); *Grande Dunes. Ltd. v. Walton Cty.*, 714 So. 2d 473, 475 (Fla. 1st DCA 1998). DOAH lacks jurisdiction to consider the merits of a petition unless and until a petitioner affirmatively establishes standing. *Westinghouse Elec. Corp. v. Jacksonville Transp. Auth.*, 491 So. 2d 1238, 1240-41 (Fla. 1st DCA 1986).

34. Pursuant to section 120.57(3), to have standing for a bid protest, a petitioner must establish that the agency's intended decision "adversely affected" the petitioner's substantial interests. *See Madison Highlands. LLC v. Fla. Hous. Fin. Corp.*, 220 So. 3d 467, 473 (Fla. 5th DCA 2017)(citing *Preston Carroll Co., v. Fla. Keys Aqueduct Auth.*, 400 So. 2d 524, 525 (Fla. 3d DCA 1981)). To establish a substantial interest, the protesting

[3] Unless otherwise indicated, all references to Florida Statutes or the Florida Administrative Code are to current versions.

entity must meet the two-prong "substantial interest" test forth in *Agrico Chemical Company v. Department of Environmental Regulation,* 406 So. 2d 478 (Fla. 2d DCA 1981). *See Madison Highlands, LLC,* at 473 (Fla. 5th DCA 2017); *Ybor III. Ltd.. supra*, at 346.

35. *Agrico* requires a challenging party to show: "(1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing, and (2) that his substantial injury is of a type or nature which the proceeding is designed to protect." *Agrico*, 406 So. 2d at 482. "The first aspect of the test deals with the degree of injury. The second deals with the nature of the injury." *Id*.

36. An injury-in-fact must result from the challenged agency action and be real and immediate, not conjectural or hypothetical. Abstract injury is insufficient to establish standing. *See Florida Dep't of Rehab. v. Jerry,* 353 So. 2d 1230 (Fla. 1st DCA 1978); *Madison Highlands* at 473 ("Under the first prong of *Agrico*, the injury must be actual and immediate, and not based on a hypothetical scenario."). In this case, the Petitioners fail to allege sufficient facts to establish that Florida Housing's preliminary funding awards will cause Petitioners' injury-in-fact that satisfies the first prong of the *Agrico* test. Even if Petitioners can prove their allegations regarding HTG and its affiliates, the RFA expressly provides a remedy that does not alter or rescind the preliminary funding awards.

37. A lower-ranked bidder only meets the substantial interest test if it demonstrates that it would be funded if a higher-ranked bidder is disqualified. Even a fifth-place bidder can establish standing if they "establish that the four higher-ranked applications must all be rejected or re-evaluated, resulting in the protesting filer being ranked the highest." *Madison Highlands* at 474; *Preston Carroll* at 525.

38. Here, as apparent from the Petitions, Petitioners have no chance of achieving funding through this RFA because all of their applications are behind the applications selected for funding.

39. While there were three HTG-related applications with better lottery numbers (i.e., 3, 6 and 14) than Quail Roost, even if the three HTG-related applications were deemed ineligible or were relegated to Priority II status, Quail Roost would still only be the 12th-ranked application and would not advance to the funding range.

40. The inability to advance to the funding range is also true for Ambar Trail and Sierra Meadows. Ambar Trail held lottery number 24, making it the 23rd-ranked eligible Priority I application by lottery number. There were four HTG-related applications with better lottery numbers than Ambar Trail. Even if all the HTG-related applications with better lottery numbers were deemed ineligible or relegated to Priority II, Ambar Trail would only advance to the 18th highest lottery number among eligible Priority I applicants, far behind all three of the preliminarily awarded applicants.

41. Similarly, Sierra Meadows, with its lottery number of 59, would only move to the ranking of 37th, after the elimination of any ineligible applications, Priority II applications, and all HTG-related applications with better lottery numbers.

42. Instead of challenging Florida Housing's scoring or evaluation of the applications selected for funding, Petitioners assert that:

> Florida Housing's failure to take any action with respect to the 15 affiliated Priority I applications placed other Applicants, including Petitioner – Applicants who followed the RFA's limitations regarding submission of the Priority I Applications, and who did not act to eliminate competition . . . at a competitive disadvantage and rendered the entire RFA's scoring and selection process fundamentally unfair.
>
> * * *
>
> By manipulating the Leveraging Classification calculations to ensure that all of its Applications

> were in Group A, the HTG entities effectively rendered the Levering Classification procedures meaningless and placed greater emphasis on lottery numbers in determining which Applicants would be funded. Because HTG entities submitted 15 Priority I Applications instead of the three Priority I Applications other Developers were allowed, the HTG entities increased their changes of obtaining lower (better) lottery numbers. Had HTG submitted only three Applications, there would have been 51 total Applicants instead of 63. The mathematical chances of a rule-abiding Developer obtaining a more favorable lottery number are far more when one Developer is allowed to submit five times the number of applications as the rule-abiding developer.

43. During the hearing on the Joint Motion to Dismiss, Petitioners' counsel conceded that even if all of the HTG applications were taken out of the process, none of the Petitioners would be moved into the funding range. It is otherwise mere speculation that that the purported manipulation of the leveraging had a negative impact on Petitioners or any other applicant or gave any applicant a better lottery number.

44. All applications received a randomly generated lottery number from the same batch of numbers. Moreover, under the terms of the RFA, a developer could submit as many Priority II applications as it wished, without limitation. Improperly submitted Priority I applications are, pursuant to the terms of the RFA, converted to Priority II applications. They are not removed from the pool of applications. Thus, whether the HTG-related applications were labeled as Priority I or Priority II is irrelevant to the assignment of lottery numbers, which was done through a random number generator when the applications were received.

45. Further, Petitioners' argument presupposes that the number of applications submitted by HTG and related entities would somehow have been different if Florida Housing deemed HTG and related entities to be in

violation of the limitation on the number of Priority 1 applications. However, under the terms of the RFA, such a determination by Florida Housing would always come after lottery numbers were assigned. Therefore, there is no support for the argument that Petitioners would receive a better number because the numbers were already issued.

46. Petitioners try to avoid their standing problems by alleging that the process was so fundamentally unfair that the entire RFA should be thrown out. However, the remedy established in the unchallenged RFA specifications is clear--applications exceeding the Priority I limit would be converted to Priority II. They would not be removed from the pool, and they would not be assigned different lottery numbers. If Petitioners had an issue with the "fairness" of the process, they could have challenged the specification. They did not. As the preliminary awards would not change, whether or not the HTG applications are considered, is contrary to the Petitioners' assertion that the alleged improprieties of HTG somehow subverted the process or made it fundamentally unfair.

47. While certainly, everything would change if all of the applications were thrown out and everyone was allowed to resubmit applications, whether Petitioners would receive an award or a more favorable lottery number with respect to any subsequent RFA is pure conjecture and speculation. Moreover, to throw out all applications on such speculation would be fundamentally unfair to applicants like Naranja Lakes, Slate Miami, and Harbour Springs who are entitled to funding based on the terms of the RFA. The alleged improprieties of HTG should not be used to unjustifiably penalize them.

48. In sum, Petitioners do not meet the *Agrico* test because they failed to demonstrate that their substantial interests are adversely affected by Florida Housing's preliminary awards. Petitioners do not cite to any binding authority, nor could the undersigned locate any such authority, that would support the assertion that, even if an applicant has no chance

of getting an award for that applicant, that applicant has standing to challenge the "fundamental fairness" of the process. A mere assertion that the fundamental fairness of the procurement process was flawed does not relieve the Petitioners of the requirement to establish standing by meeting both prongs of the *Agrico* test and demonstrating a substantial interest that is adversely affected by the intended agency action. *See Madison Highlands, supra at 474.*

49. *Fairbanks v. Department of Transportation*, 635 So. 2d 58 (Fla. 1st DCA 1984), cited by Petitioners in support of the argument that one does not have to be an eligible bidder in line for an award to have standing, "does not involve a bid protest pursuant to [section 120.57(3)]. Rather, it involves the denial of a request for a formal hearing pursuant to section 120.57[(1)]." *See Id.* at 61. The dispute in *Fairbanks* was over the specifications in a construction contract that had been awarded. The awarded contractor submitted plans to the Department that included Fairbanks' equipment. The Department rejected the submitted plans because the contract specifications specifically called for the use of Fairbanks' competitor's product. Fairbanks requested a formal section 120.57(1) hearing to challenge the contract specifications. The Department challenged Fairbanks' standing since it was not a bidder for the construction contract. The Department argued that chapter 337, Florida Statutes, which controls construction contracts, was intended to protect only the interest of bidders, not suppliers like Fairbanks. *Id* at. 59. The First District Court of Appeal disagreed, finding that Fairbanks' substantial interests were adversely affected. *Id.* at 61.

50. Unlike the appellant in *Fairbanks*, the Petitioners have failed to show that their substantial interests were affected by the agency's actions. Florida Housing's alleged inaction regarding the HTG applications has no bearing on the propriety of Florida Housing's scoring and intended selection of Naranja Lakes, Slate Miami, and Harbour Springs for funding.

51. Petitioners cannot establish that, but for an error on the part of Florida Housing, Petitioners' applications would have been selected for funding, or that Petitioners' applications would have received a higher lottery number. Here, Petitioners were not prevented from competing for funding nor were any of Petitioners' applications rejected during the process. The Petitioners' failure to make the funding range was not due to any error by Florida Housing or any actions by the applicants selected for funding. In fact, Petitioners' failure to obtain funding cannot be directly tied to any HTG-related action.

52. In sum, the Petitioners failed to demonstrate that the assignment of lottery numbers or treatment of HTG applications failed to comply with the express terms of the RFA, or was otherwise "fundamentally unfair," and did not demonstrate that the outcome could have changed such that their interests are substantially affected in order to meet the standing requirements to challenge the preliminary awards or maintain the Petitions filed in this case. Therefore, for the reasons set forth above and in the Joint Motion to Dismiss, the Petitioners and Petitions should be dismissed for lack of standing.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered finding that Petitioners lack standing and dismissing the Petitions with prejudice.

DONE AND ENTERED this 3rd day of April, 2020, in Tallahassee, Leon County, Florida.

JAMES H. PETERSON, III
Administrative Law Judge
Division of Administrative Hearings
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit exceptions within 10 days from the date of the Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.