

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

MADISON LANDING II, LLC AND ARC 2020,
LLC AND NEW SOUTH RESIDENTIAL, LLC,

Petitioners,

vs.

Case No. 21-0146BID

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____/
HTG MADISON PARK, LTD

Petitioner,

vs.

Case No. 21-0147BID

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____/

RECOMMENDED ORDER

The final hearing in this matter was conducted before Administrative Law Judge Brittany O. Finkbeiner of the Division of Administrative Hearings ("DOAH"), on February 9, 2021, via Zoom conference.

APPEARANCES

For Petitioners, Madison Landing II, LLC; ARC 2020, LLC; and New South Residential, LLC (collectively, "Madison Landing"):

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For Petitioner, HTG Madison Park, LTD ("Madison Park"):

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For Respondent, Florida Housing Finance Corporation ("Florida Housing"):

Christopher Dale McGuire, Esquire
Florida Housing Finance Corporation
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STATEMENT OF THE ISSUE

The issue in this case is whether Florida Housing's proposed action to deem Madison Landing eligible for an award of housing tax credit funds, as contemplated under Request for Applications 2020-202 Housing Credit Financing for Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach and Pinellas Counties ("the 2020 RFA"), is contrary to governing statutes, rules or policies, or the 2020 RFA specifications. The standard of proof is whether Florida Housing's proposed action is clearly erroneous, contrary to competition, arbitrary, or capricious.

PRELIMINARY STATEMENT

On August 26, 2020, Florida Housing issued the 2020 RFA to solicit applications for housing tax credits. Applications were due by October 20, 2020. There were 35 applications submitted in response to the 2020 RFA, including those of WRDG T4 Phase Two, L.P. ("WRDG"), Madison Landing, and Madison Park. Eight applications were recommended for funding, including WRDG. Petitioner Madison Park, filed its petition challenging the eligibility of funded applicant, WRDG, and eligible, but unfunded applicant,

Madison Landing. Madison Landing filed a petition challenging the eligibility of WRDG. Upon motion, Petitioners' cases were consolidated into the present case. On January 12, 2021, the parties filed a Stipulation for Entry of Findings of Fact, which explained that WRDG agreed to the designation of its application as ineligible for funding under the 2020 RFA. As a result, Madison Landing would be selected for funding in place of WRDG by operation of having the next-highest ranking, unless deemed ineligible. The only remaining issue in this case is whether Madison Landing should be found ineligible for funding, which would result in Madison Park being selected in place of Madison Landing. No other Applicants selected for funding will be impacted by the outcome of this case.

The final hearing took place on February 9, 2021. The parties offered joint exhibits 1 through 8, all of which were admitted into evidence. Petitioners presented the testimony of Marissa Button, in her capacity as the corporate representative of Florida Housing. Madison Landing's Exhibits 1 through 4 were also admitted into evidence. Madison Park presented the testimony of Matthew Reiger, and offered its exhibits 1 through 8 and 13, all of which were admitted into evidence.

The one-volume Transcript was filed with DOAH on February 25, 2021. The parties' proposed recommended orders were timely filed and were duly considered in the preparation of this Recommended Order. The stipulated facts that were filed by the parties on January 26, 2021, and the Joint Pre-hearing Stipulation filed February 5, 2021, have been incorporated into the Findings of Fact. Unless otherwise indicated, references to the Florida Statutes are to the 2020 version.

FINDINGS OF FACT

1. Florida Housing is a public corporation organized pursuant to Chapter 420, Part V, Florida Statutes, whose address is 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301, and for the purposes of these proceedings, an agency of the State of Florida.

2. Madison Landing is an Applicant requesting an allocation of \$1,950,000 in competitive housing credits in in the 2020 RFA. Its application, 2021-021C, was deemed eligible, but was not selected for funding by Florida Housing.

3. Madison Park is an Applicant requesting an allocation of \$2,881,960 in competitive housing credits in the 2020 RFA. Its application, 2021-004C, was deemed eligible, but was not selected for funding by Florida Housing.

4. WRDG is an Applicant requesting an allocation of \$2,375,000 in competitive housing credits in the 2020 RFA. Its application, 2021-025C, was deemed eligible and was preliminarily selected for funding by Florida Housing.

5. Florida Housing administers various affordable housing programs, including the Housing Credit Program, pursuant to Section 42 of the Internal Revenue Code (the "IRC" or "the Code") and section 420.5099, under which Florida Housing is designated as the Housing Credit agency for the State of Florida within the meaning of Section 42(h)(7)(A) of the IRC, and Florida Administrative Code Chapters 67-48 and 67-60.

6. Florida Housing has established, by rule, a competitive solicitation process known as the Request for Applications ("RFA") to assess the relative merits of proposed developments, pursuant to chapters 67-48 and 67-60.

7. An RFA sets forth the information required to be provided by an Applicant, which includes a general description of the type of projects that will be considered eligible for funding and delineates the submission requirements. While there are numerous references to Florida Housing's rules throughout the RFA, RFAs themselves are not adopted or incorporated by rule.

8. Florida Housing issues many RFAs each year. Although an issued RFA may be similar to these issued in previous years, each RFA is unique. The RFA process begins when Florida Housing requests the Florida Housing Board of Directors ("the Board") to approve Florida Housing's plan for allocating its resources through the various RFAs. If the plan is approved by the Board, Florida Housing begins working on each individual RFA. Florida Housing posts draft documents to its website for public review, such as a draft of the RFA, and holds a workshop in which the RFA is discussed in detail, highlighting language that changed from the previous year. The public is given the opportunity to ask questions and submit written comments for further suggestions and/or additional edits prior to the RFA's issuance.

9. Marisa Button, Director of Multifamily Programs for Florida Housing, credibly and persuasively testified that Questions and Answers are provided as guidance, but do not provide new requirements to override the terms of an RFA. In the event of an inconsistency between Questions and Answers and another form of guidance for applicants, Florida Housing has maintained the position that the least restrictive guidance controls.

10. Rule 67-60.006 provides, in pertinent part, that "[t]he failure of an Applicant to supply required information in connection with any competitive solicitation pursuant to this rule chapter shall be grounds for a determination of non-responsiveness with respect to its Application."

11. By applying, each Applicant certifies that:

Proposed Developments funded under this RFA will be subject to the requirements of the RFA, inclusive of all Exhibits, the Application requirements outlined in Rule Chapter 67-60, F.A.C., the requirements outlined in Rule Chapter 67-48, F.A.C. and the Compliance requirements of Rule Chapter 67-53, F.A.C.

12. On August 26, 2020, Florida Housing issued the 2020 RFA, proposing to provide an estimated \$18,669,520 of Housing Credit Financing for

Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas Counties. Modifications to the 2020 RFA were made on September 11 and October 12, 2020. The Application Deadline for the 2020 RFA was October 20, 2020.

13. On or about October 20, 2020, 35 applications were submitted in response to the 2020 RFA.

14. A Review Committee was appointed to review the applications and make recommendations to the Board. The Review Committee found 34 applications eligible and one application ineligible. Through the ranking and selection process outlined in the 2020 RFA, eight applications were recommended for funding. In accordance with the funding selection process set forth in the 2020 RFA, one application was selected from each of Duval, Palm Beach, Pinellas, Hillsborough, and Orange counties; two applications were selected from Broward County; and one application (WRDG) was selected from any of these counties. On December 4, 2020, the Board approved these recommendations.

15. On December 17, 2020, Madison Landing timely filed a Petition for Formal Administrative Proceedings, which was referred to DOAH and assigned Case No. 21-0146BID. This petition challenged the eligibility of both WRDG and MHP FL II, LLC. On January 13, 2021, Madison Landing dismissed all of its allegations against MHP FL II, LLC.

16. On December 17, 2020, Madison Park timely filed a Petition for Formal Administrative Proceedings, which was referred to DOAH and assigned Case No. 21-0147BID. An amended petition was filed on January 13, 2021. This petition challenged the eligibility of both WRDG and Madison Landing.

17. On January 26, 2021, all parties entered into a Stipulation for Entry of Findings of Fact in which WRDG conceded that its application should have been found ineligible.

18. WRDG is ineligible for funding under the 2020 RFA.

19. With WRDG ineligible for funding, Madison Landing would be selected for funding in place of WRDG. If both WRDG and Madison Landing were found to be ineligible for funding, Madison Park would be selected for funding in place of WRDG and Madison Landing. No other Applicant selected for funding will be impacted regardless of the outcome of this case.

20. No challenges were made to the terms of the 2020 RFA.

21. Madison Landing's application includes an executed Applicant Certification and Acknowledgment Form, which provides, "The Applicant, the Developer and all Principals are in good standing among all other state agencies and have not been prohibited from applying for funding." The phrase "good standing among all other state agencies" is not defined; and no evidence was presented as to the definitive meaning of the phrase. No evidence was presented that Madison Landing's Principals are not in good standing with any state agency or have been prohibited from applying for funding.

22. The 2020 RFA at Section Four A.3.a. provides that Applicants must disclose the name of the Applicant entity and provide evidence that it is legally formed:

(2) The Applicant must be a legally formed entity [i.e., limited partnership, limited liability company, etc.] qualified to do business in the state of Florida as of the Application Deadline. Include, as Attachment 2 to Exhibit A, evidence from the Florida Department of State, Division of Corporations, that the Applicant satisfies the foregoing requirements. Such evidence may be in the form of a certificate of status or other reasonably reliable information or documentation issued, published or made available by the Florida Department of State, Division of Corporations.

23. Rule 67-48.002(9) (6/23/2020), defines "Applicant" as follows:

(9) "Applicant" means any person or legal entity of the type and with the management and ownership structure described herein that is seeking a loan or

funding from the Corporation by submitting an Application or responding to a competitive solicitation pursuant to rule Chapter 67-60, F.A.C., for one or more of the Corporation's programs. For purposes of Rules 67-48.0105, 67-48.0205 and 67-48.031, F.A.C., Applicant also includes any assigns or successors in interest of the Applicant. Unless otherwise stated in a competitive solicitation, as used herein, a 'legal entity' means a legally formed corporation, limited partnership or limited liability company.

24. The 2020 RFA at Section Four A.3.c. provides that Applicants must disclose Principals of both the Applicant and Developer entities. The 2020 RFA provides in pertinent part:

c. Principals Disclosure for the Applicant and for each Developer (5 points)

(1) Eligibility Requirements

To meet the submission requirements, upload the Principals of the Applicant and Developer(s) Disclosure Form (Form Rev. 05-2019) ("Principals Disclosure Form") as outlined in Section Three above. Prior versions of the Principal Disclosure Form will not be accepted.

To meet eligibility requirements, the Principals Disclosure Form must identify, pursuant to Subsections 67-48.002(94), 67-48.0075(8) and 67-48.0075(9), F.A.C., the Principals of the Applicant and Developer(s) as of the Application Deadline. A Principals Disclosure Form should not include, for any organizational structure, any type of entity that is not specifically included in the Rule definition of Principals.

For Housing Credits, the investor limited partner of an Applicant limited partnership or the investor member of an Applicant limited liability company must be identified on the Principal Disclosure Form.

25. Rule 67-48.002(94) defines "Principal" as follows:

(94) "Principal" means:

(a) For a corporation, each officer, director, executive director, and shareholder of the corporation.

(b) For a limited partnership, each general partner, and each limited partner of the limited partnership.

(c) For a limited liability company, each manager and each member of the limited liability company.

(d) For a trust, each trustee of the trust and all beneficiaries of majority age (i.e., 18 years of age) as of the Application Deadline. Page 10 of 22.

(e) For a Public Housing Authority, each officer, director, commissioner, and executive director of the Authority.

26. The requirement to provide evidence that the Applicant is a legally formed entity, as well as the requirement to provide a Principals for Applicant and Developer(s) Disclosure Form, are identified as "Eligibility Items." Section Five A.1. of the 2020 RFA states that "only Applications that meet all of the following Eligibility Items will be eligible for funding and considered for funding selection."

27. Madison Landing submitted Principals of the Applicant and Developer(s) Disclosure Form(s) with its application. Both forms were approved during the Advance Review Process. On the Principals of the Applicant form, Madison Landing II, LLC, was identified as the Applicant entity. The Principals of the Applicant entity were identified as Patrick E. Law, Manager; Madison Landing II Apartments, LLC, Non-Investor Member; and Patrick E. Law, Investor Member.

28. Madison Landing II Apartments, LLC, filed Articles of Organization for Florida Limited Liability Company with the Florida Division of Corporations on January 5, 2021, with an effective date of December 31, 2020.

29. The 2020 RFA requires that the Applicant demonstrate that it is a legally formed entity as of the Application Deadline; however, there is no explicit requirement in the 2020 RFA that each Principal of the Applicant demonstrate that it is a legally formed entity as of the Application Deadline.

30. Ms. Button testified that her initial view was that the failure of Madison Landing's Principal, Madison Landing II Apartments, LLC, to incorporate by the application deadline should render the application ineligible. However, upon further research, she changed her position, believing that Florida Housing was precedentially bound by a previous final order, which found that an application was eligible under similar legal and factual circumstances.

31. The previous case, on which Florida Housing relied, was decided before Florida Housing adopted the current RFA procedures for awarding funding. Ms. Button testified, however, that while some of the processes followed during the Universal Cycle, in place at that time, were different than the RFA process, the requirements for disclosure of Principals were essentially the same.

32. Florida Housing allows interested parties to submit written questions to be answered by Florida Housing staff for each RFA that is issued. The Question-Answer period is referenced specifically within each RFA.

33. The following Question and Answer are posted on Florida Housing's website for RFA 2018-111:

Question 12:

Do the entities listed on the Principal Disclosure Form have to be active as of the stamped "Approved" date or as of the Application Deadline?

Answer:

As of the Application Deadline. The Applicant may upload a Principals Disclosure Form stamped "Approved" during the Advance Review Process provided (a) it is still correct as of the Application Deadline, (b) it was approved for the type of funding being requested (i.e., Housing Credits or Non-Housing Credits)

34. The same Question and Answer above are on Florida Housing's website for RFA 2018-110; RFA 2018-112; and RFA 2018-113. The same Question and Answer, however, do not appear in Questions and Answers for the 2020 RFA at issue in this case.

35. Although Questions and Answers from past RFAs remain on the Florida Housing website, they are discrete to the specific RFA for which they were issued.

36. Rule 67-48.002(9) (7/2018) defines Applicant as follows:

(9) "Applicant" means any person or legal entity of the type and with the management and ownership structure described herein that is seeking a loan or funding from the Corporation by submitting an Application or responding to a competitive solicitation pursuant to rule chapter 67-60, F.A.C., for one or more of the Corporations programs. For purposes of rules 67-48.0105, 67-48.0205 and 67-48.031, F.A.C., Applicant also includes any assigns or successors in interest of the Applicant. Unless otherwise stated in a competitive solicitation, as used herein, a legal entity means a legally formed corporation, limited partnership or limited liability company with a management and ownership structure that consists exclusively of all natural persons by the third principal disclosure level. For Applicants seeking Housing Credits, the Housing Credits Syndicator/Housing Credit investor need only be disclosed at the first principal level and no other disclosure is required. The terms "first principal disclosure level" and "third principal

disclosure level" have the meanings attributed to them in the definition of "Principal."

37. Rule 67-48.002(9) (11/2011) defines Applicant as follows:

(9) "Applicant" means any person or legally formed entity that is seeking a loan or funding from the Corporation by submitting an Application or responding to a request for proposal for one or more of the Corporation's programs. For purposes of Rules 67-48.0105, 67-48.0205 and 67-48031, F.A.C., Applicants also includes any assigns or successors in interest of the Applicant.

38. Madison Park argues that Madison Landing's Principal, Madison Landing II Apartments, LLC, did not demonstrate that it was a legally-formed entity as of the Application Deadline, and therefore, Madison Landing's Principal Disclosure Form did not satisfy the 2020 RFA's requirements. Madison Park argues that Madison Landing's application should be deemed ineligible for funding as a result.

39. Based on the weight of the credible evidence and the language of the 2020 RFA and the governing law, the undersigned finds that Florida Housing did not contravene the 2020 RFA, or any other applicable authority, through the process by which it determined that Madison Landing's application was eligible for the award.

CONCLUSIONS OF LAW

40. DOAH has jurisdiction over the parties and subject matter of this case. §§ 120.569 and 120.57(1) and (3), Fla. Stat.

41. Pursuant to section 120.57(3)(f), the burden of proof rests with Petitioner, Madison Park, as the party opposing the proposed agency action. *See State Contracting & Eng'g Corp. v. Dep't of Transp.*, 709 So. 2d 607, 609 (Fla. 1st DCA 1998). Madison Park must sustain its burden of proof by a

preponderance of the evidence. *See Fla. Dep't of Transp. v. J.W.C. Co.*, 396 So. 2d 778, 787 (Fla. 1st DCA 1981).

42. In this bid protest, the following standards apply:

[T]he administrative law judge shall conduct a de novo proceeding to determine whether the agency's proposed action is contrary to the agency's governing statutes, the agency's rules or policies, or all solicitation specifications. The standard of proof for such proceedings shall be whether the proposed agency action was clearly erroneous, contrary to competition, arbitrary, or capricious.

§ 120.57(3)(f), Fla. Stat.

43. "In this context, the phrase '*de novo* hearing' is used to describe a form of intra-agency review. The judge may receive evidence, as with any formal hearing under section 120.57(1), but the object of the proceeding is to evaluate the action taken by the agency." *State Contracting & Eng'g Corp.*, 709 So. 2d at 609. The judge neither "sits as a substitute" for the agency nor "makes a determination whether to award the bid *de novo*." *Intercontinental Props., Inc. v. State Dep't of HRS* 606 So. 2d 380, 386 (Fla. 3d DCA 1992).

44. Madison Park challenges Florida Housing's intent to find Madison Landing's application eligible for an award of housing credit funds. Thus, Madison Park has the burden to prove, by a preponderance, of the evidence that the determination was clearly erroneous, contrary to competition, arbitrary, or capricious. *AT&T Corp. v. State, Dep't of Mgmt. Servs.*, 201 So. 3d 852, 854 (Fla. 1st DCA 2016); § 120.57(3)(f), Fla. Stat.

45. An agency's award is "clearly erroneous" if it "conflicts with the plain and ordinary intent of the law." *Colbert v. Dep't of Health*, 890 So. 2d 1165, 1166 (Fla. 1st DCA 2004). However, if the award "falls within the permissible range of interpretations," it cannot be deemed clearly erroneous. *Id.*

46. The "contrary to competition" standard is not defined by statute or rule, but generally means an award that contravenes the following purposes of competitive procurement:

[T]o protect the public against collusive contracts; to secure fair competition upon equal terms to all bidders; to remove not only collusion but temptation for collusion and opportunity for gain at public expense; to close all avenues to favoritism and fraud in its various forms; to secure the best values for the [public] at the lowest possible expense; and to afford an equal advantage to all desiring to do business with the [government], by affording an opportunity for an exact comparison of bids.

Wester v. Belote, 138 So. 721, 723-24 (Fla. 1931); *See also AT&T Corp.*, 201 So. 3d at 855 ("Public procurement is intended to protect the public by promoting 'fair and open competition,' thereby reducing the appearance and opportunity for favoritism and misconduct.").

47. "An action is arbitrary if it is not supported by logic or the necessary facts, and capricious if it is adopted without thought or reason or is irrational." *Hadi v. Liberty Behav. Health Corp.*, 927 So. 2d 34, 38-39 (Fla. 1st DCA 2006) (internal quotations omitted). Generally, the inquiry focuses on "whether the agency: (1) has considered all relevant factors; (2) has given actual, good faith consideration to those factors; and (3) has used reason rather than whim to progress from consideration of these factors to its final decision." *Adam Smith Enters., Inc. v. State Dep't of Env'tl. Reg.*, 553 So. 2d 1260, 1273 (Fla. 1st DCA 1989). In a bid protest, deciding whether a decision is arbitrary is "generally controlled by a determination of whether the [agency] complied with its own proposal criteria." *Emerald Corr. Mgmt. v. Bay Cty. Bd. of Cty. Comm'rs*, 955 So. 2d 647, 653 (Fla. 1st DCA 2007). Thus, an agency's decision that "is justifiable under any analysis that a reasonable person would use to reach a decision of similar importance ... is neither

arbitrary nor capricious." *Dravo Basic Materials Co. v. Dep't of Transp.*, 602 So. 2d 632, 634 n.3 (Fla. 2d DCA 1992).

48. It is well-established that an agency "has wide discretion in soliciting and accepting bids for public improvements and its decision, when based on an honest exercise of this discretion, will not be overturned by a court even if it may appear erroneous and even if reasonable persons may disagree." *Dep't of Transp. v. Groves-Watkins Constructors*, 530 So. 2d 912, 913 (Fla. 1988) (quoting *Liberty Cty. v. Baxter's Asphalt & Concrete, Inc.*, 421 So. 2d 505, 507 (Fla. 1982)). The administrative law judge should not "second guess the members of [the] evaluation committee to determine whether he and/or other reasonable and well-informed persons might have reached a contrary result." *Scientific Games, Inc. v. Dittler Bros.*, 586 So. 2d 1128, 1131 (Fla. 1st DCA 1991). Indeed, if an agency "makes an erroneous decision about which reasonable people may disagree," its decision should not be overturned "absent a showing of dishonesty, illegality, fraud, oppression or misconduct." *Sutron Corp. v. Lake Cty. Water Auth.*, 870 So. 2d 930, 932 (Fla. 2d DCA 2004).

49. Florida Housing's intent to find Madison Landing's application eligible for funding was not clearly erroneous, contrary to competition, arbitrary, or capricious. Marisa Button testified that, in determining Madison Landing's eligibility for funding, Florida Housing relied heavily on the precedent of a similar case, *Heritage Village Commons, Ltd v. Florida Housing Finance Corporation*, FHFC Case No. 2012-013-UC (Fla. FHFC RO May 23, 2012; FO June 8, 2012). *Heritage Village* was decided by a duly designated Hearing Officer pursuant to section 120.57(2). In *Heritage Village*, the issue was whether the Applicant had failed to meet threshold requirements because the identified Developer entity had not been a legally formed entity as of the application deadline. The hearing officer concluded that because neither the Universal Application package nor the rules in place at the time required the Developer to be a legally formed entity, Florida Housing could not penalize

the applicant "for failure to comply with a nonexistent rule." *Heritage Village* RO at 7.

50. Florida Housing is statutorily required to follow its own stated policy or prior practice, pursuant to section 120.68(7)(e)3. An agency's failure to follow its own precedent which contains similar facts is "contrary to established administrative principles and sound public policy." *Villa Capri Assoc. v. Fla. Hous. Fin. Corp.*, 23 So. 3d 795, 798 (Fla. 1st DCA 2009) (quoting *Brookwood-Walton Cty. Convalescent Ctr. v. Ag. for Health Care Admin.*, 845 So. 2d 223, 229 (Fla. 1st DCA 2009)). Marisa Button credibly and persuasively testified that Florida Housing came to the determination that Madison Landing was eligible for funding under the reasonable belief that such a result was compelled by the precedent of *Heritage Village*.

51. Madison Park argues that *Heritage Village* is distinguishable from the present case because the Universal Cycle process in place at the time was different than the present RFA process, but does not identify any procedural differences that render *Heritage Village* inapplicable. Madison Park also interprets the requirement in the 2020 RFA that Applicants certify that all Principals are "in good standing among all other state agencies" as being tantamount to an explicit requirement of incorporation. Finally, Madison Park points to changes in the definition of "Applicant" in Rule 67-48.002, subsequent to *Heritage Village*, as a basis for discarding its holding in application to the 2020 RFA. In the present case, as in *Heritage Village*, deeming Madison Landing ineligible or funding for the reasons advanced by Madison Park would require the enforcement of a nonexistent rule.

52. Madison Park's arguments are simply too attenuated to meet the burden in this case. Consistent with rule 67-48.002(9), the 2020 RFA specifically requires that an Applicant be a legally formed entity qualified to do business in the State of Florida as of the Application Deadline. There is no similar requirement in the 2020 RFA, or anywhere else, with respect to Principals of the Applicant. To conflate the phrase "in good standing among

all other state agencies" with "legally formed entity" would negate the drafters' decision to use different phrases in different parts of the RFA. Use of the words "in good standing with all other state agencies," with respect to Principals, signals that the language means something different.

53. Florida Housing's reliance on *Heritage Village* remains valid despite changes in the process and governing law, which do not disturb the central holding.

54. Madison Park asserts that a Questions and Answers document issued by Florida Housing in 2018, in relation to RFAs that were issued in 2018, has the effect of changing the terms of the 2020 RFA. The Questions and Answers documents from 2018 do not have the force of changing the RFA. The Questions and Answers document for the 2020 RFA does not require Principals of the Applicant to be legally formed. Marisa Button testified credibly and persuasively that the Questions and Answers do not have the effect of changing the terms of the RFA.

55. Finally, not every deviation from the RFA is material. A deviation is only material if it gives the bidder a substantial advantage over the other bidders and thereby restricts or stifles competition. *Tropabest Foods, Inc. v. Fla. Dep't. of Gen. Servs.*, 493 So. 2d 50, 52 (Fla. 1st DCA 1986). Madison Park did not prove that the purported deviation, i.e., not legally forming the Principal, Madison Landing II Apartments, LLC, was a substantial competitive advantage over other bidders.

56. Florida Housing's finding that Madison Landing II Apartments, LLC, was not required to be legally formed by the Application Deadline cannot be invalidated, because upon review of the evidence, there is no definite and firm conviction that a mistake has been committed. Florida Housing's conclusion falls within the permissible range of interpretations, and, therefore, cannot be deemed clearly erroneous. The undersigned cannot find that Florida Housing's intended award is contrary to competition because there is no evidence in the record that Florida Housing stifled fair

and open competition. Florida Housing's action was not arbitrary and capricious because the evidence does not lead to the conclusion that its determination was unsupported by logic or fact, or adopted without thought or reason.

57. It is clear that Florida Housing's intended action to find Madison Landing's application eligible for funding was grounded in an honest and reasonable exercise of discretion.

58. Overall, Madison Park failed to demonstrate that Florida Housing's proposed action finding Madison Landing's application eligible is contrary to governing statutes, rules, the 2020 RFA specifications, or clearly erroneous, contrary to competition, arbitrary, or capricious. In conclusion, Madison Landing's application is eligible for funding.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Florida Housing Finance Corporation enter a final order: (1) finding the application of WRDG ineligible for funding; (2) finding the application of Madison Landing eligible for funding; and (3) dismissing the protest of Madison Park.

DONE AND ENTERED this 29th day of March, 2021, in Tallahassee, Leon County, Florida.



BRITTANY O. FINKBEINER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of March, 2021.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

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