

**STATE OF FLORIDA**  
**DIVISION OF ADMINISTRATIVE HEARINGS**

HTG ASTORIA, LTD,

Petitioner,

vs.

Case No. 21-0725BID

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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MHP FL VIII, LLLP,

Petitioner,

vs.

Case No. 21-0726BID

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

\_\_\_\_\_/

VISTA AT COCONUT PALM, LTD,

Petitioner,

vs.

Case No. 21-0727BID

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted via Zoom on March 29, 2021, before Administrative Law Judge Garnett W. Chisenhall of the Division of Administrative Hearings (“DOAH”).

APPEARANCES

For Petitioner HTG Astoria, Ltd, and Intervenor University Station I:

Maureen McCarthy Daughton, Esquire  
Maureen McCarthy Daughton, LLC  
Suite 3-231  
1400 Village Square Boulevard,  
Tallahassee, Florida 32312

For Petitioner MHP FL VIII LLLP, and Intervenor Douglas Gardens IV,  
Ltd:

Seann M. Frazier, Esquire  
Marc Ito, Esquire  
Parker, Hudson, Rainer & Dobbs, LLP  
Suite 750  
215 South Monroe Street  
Tallahassee, Florida 32301

For Petitioner Vista at Coconut Palm, Ltd.:

Brittany Adams Long, Esquire  
Radey Law Firm, P.A.  
Suite 200  
301 South Bronough Street  
Tallahassee, Florida 32301

For Respondent Florida Housing Finance Corporation:

Betty C. Zachem, Esquire  
Christopher D. McGuire, Esquire  
Florida Housing Finance Corporation  
Suite 5000  
227 North Bronough Street  
Tallahassee, Florida 32301

For Intervenors RST The Willows, LP and Residences at SoMi Parc, LLC:

Michael P. Donaldson, Esquire  
Carlton Fields, P.A.  
Suite 500  
215 South Monroe Street  
Post Office Drawer 190  
Tallahassee, Florida 32302

For Intervenor Fulham Terrace, Ltd:

Craig D. Varn, Esquire  
Manson, Bolves, Donaldson, Varn, P.A.  
Suite 820  
106 East College Avenue  
Tallahassee, Florida 32301

Amy Wells Brennan, Esquire  
Manson, Bolves, Donaldson, Varn, P.A.  
Suite 300  
109 North Brush Street  
Tampa, Florida 33602

For Intervenor BDG Fern Grove, LP:

Michael J. Glazer, Esquire  
Ausley McMullen  
123 South Calhoun Street  
Post Office Box 391  
Tallahassee, Florida 32302

For Intervenor Quiet Meadows, Ltd:

William D. Hall, Esquire  
John L. Wharton, Esquire  
Daniel Ryan Russell, Esquire  
Dean Mead & Dunbar  
Suite 1200  
106 East College Avenue  
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

Whether Florida Housing Finance Corporation's ("Florida Housing") preliminary award of funding to University Station I, LLC ("University Station"), was clearly erroneous, contrary to competition, arbitrary or capricious, or contrary to Florida Housing's governing statutes, rules, policies, or RFA specifications.

PRELIMINARY STATEMENT

This case arises from Florida Housing’s notice of preliminary award of funding for applications submitted pursuant to Request for Applications 2020-205 “SAIL Financing of Affordable Multifamily Housing Developments to be used in Conjunction with Tax-Exempt Bond Financing and Non-Competitive Housing Credits” (“the RFA”). Vista at Coconut Palm, Ltd. (“Vista”), was found eligible for funding, but was not selected for funding.

Vista timely filed a Formal Written Protest and Petition for Administrative Hearing, which is Case No. 21-0727BID. Vista timely challenged the awards to both University Station and Residences at SoMi Parc (“SoMi Parc”). Prior to the Final Hearing, Vista, Florida Housing, and SoMi Parc entered into a stipulation that SoMi Parc was not eligible for funding in this RFA because it had already entered into credit underwriting under a different RFA. Thus, the only issue remaining is Vista’s challenge to University Station’s application.

HTG Astoria, Ltd (“HTG Astoria”), filed a timely Petition challenging the funding award to RST The Willows (“The Willows”), which is Case No. 21-0725BID. Prior to the Final Hearing, HTG Astoria, The Willows, and Florida Housing entered into a stipulation agreeing that The Willows was ineligible for funding.

MHP FL VIII, LLLP (“MHP”), filed a timely Petition challenging the funding award to Quiet Meadows, Ltd (“Quiet Meadows”), and Fulham Terrace, Ltd. (“Fulham Terrace”), which became Case No. 21-0726BID.<sup>1</sup> Florida Housing, MHP, Fulham Terrace, Quiet Meadows, and Douglas Gardens IV, Ltd. (“Douglas Gardens”), entered into a settlement agreement

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<sup>1</sup> Case Nos. 21-725, 21-726, and 21-727 were consolidated via an Order issued on February 25, 2021.

and stipulation. In that agreement, the parties agreed that Douglas Gardens, MHP, and Quiet Meadows are ineligible for funding under the RFA. The parties further agreed that Fulham Terrace was eligible for funding. MHP then withdrew its Petition.

BDG Fern Grove, L.P. (“Fern Grove”), also entered an appearance as an Intervenor in Case Nos. 21-0726 and 21-0727 because certain changes in the funding scenarios could have resulted in a loss of preliminary funding to its development. Given the stipulations between the parties, Fern Grove’s application will not lose funding.

In light of the stipulations, the only remaining issue pertained to Case No. 21-0727 and whether University Station’s application should be found ineligible for failing to include a particular document with its application.

The final hearing took place as scheduled on March 29, 2021. Florida Housing presented testimony from Marissa Button. Vista presented testimony from Kenneth Naylor, and Vista Exhibits 1 and 2 were accepted into evidence. University Station called no witnesses, and University Station Exhibits 2 and 3 were accepted into evidence. The undersigned noted Vista’s relevancy objections to University Station’s exhibits. Finally, Joint Exhibits 1, 5, and 13 were accepted into evidence. Also accepted as exhibits were the stipulations between HTG Astoria, Florida Housing, and The Willows (The Willows Exhibit 1); MHP, Fulham Terrace, Douglas Gardens, Quiet Meadows, and Florida Housing (Fern Grove Exhibit 1); and Vista, SoMi Parc, and Florida Housing (SoMi Parc Exhibit 1).

The Transcript from the final hearing was filed on April 16, 2021. The parties timely filed proposed recommended orders on April 26, 2021, and

those proposed recommended orders were considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

Based on the evidence adduced at the final hearing, the record as a whole, the stipulated facts, and matters subject to official recognition, the following Findings of Fact are made:

#### Findings on Florida Housing and the RFA

1. Florida Housing is a public corporation created pursuant to section 420.504, Florida Statutes, and promotes public welfare by administering the financing of affordable housing in Florida. Section 420.5099 designates Florida Housing as the State of Florida's housing credit agency within the meaning of section 42(h)(7)(A) of the Internal Revenue Code. Accordingly, Florida Housing is responsible for establishing procedures for allocating and distributing low income housing tax credits.
2. Florida Housing allocates housing credits and other funding via requests for proposals or other competitive solicitation methods identified in section 420.507(48).
3. Florida Housing initiated the instant competitive solicitation by issuing the RFA on October 15, 2020, and anticipates awarding up to an estimated \$88,959,045.00 in State Apartment Incentive Loan ("SAIL")<sup>2</sup> financing.
4. The RFA set forth a process by which applications would be scored based, in part, on eligibility items. Only applications satisfying all of the eligibility items were eligible for funding and considered for selection.

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<sup>2</sup> Marissa Button, the Director of Multifamily Programs at Florida Housing, testified that the SAIL program finances the development of multifamily, affordable rental housing. The Florida Legislature traditionally appropriates money for the SAIL program via the State Housing Trust Fund.

5. Site Control was an eligibility item because Florida Housing wants assurances that applicants selected for funding will be able to actually use the development sites.<sup>3</sup>

6. Applicants satisfy the Site Control requirement by providing a properly completed and executed Florida Housing Site Control Certification Form (“the Site Control Form”). In order for the Site Control Form to be considered complete, an applicant had to attach documentation demonstrating that it: (a) was a party to an eligible contract or lease; or (b) owned the property in question.

7. The RFA set forth specific requirements for contracts and leases used for demonstrating site control. For example, a contract had to satisfy all of the following conditions:

(a) It must have a term that does not expire before May 31, 2021 or that contains extension options exercisable by the purchaser and conditioned solely upon payment of additional monies which, if exercised, would extend the term to a date that is not earlier than May 31, 2021.

(b) It must specifically state that the buyer’s remedy for default on the part of the seller includes or is specific performance;

(c) The Applicant must be the buyer unless there is an assignment of the eligible contract, signed by the assignor and the assignee, which assigns all of the buyer’s rights, title and interests in the eligible contract to the Applicant; and

(d) The owner of the subject property must be the seller, or is a party to one or more intermediate contracts, agreements, assignments, options, or

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<sup>3</sup> Ms. Button explained that Site Control “is a component of how the applicant demonstrates its ability to proceed with the proposed development. And essentially it is the – the way that we require them to demonstrate they have control over the proposed development site.” As for why Site Control is important, Ms. Button testified that Florida Housing wants “to be assured if the – the applicant is successful in its request for funding, that the – they will be able to actually use the development site.”

conveyances between or among the owner, the Applicant, or other parties, that have the effect of assigning the owner's right to sell the property to the seller. Any intermediate contract must meet the criteria for an eligible contract in (a) and (b) above.

8. The language quoted above indicates that the RFA was referring to a sales contract when it used the term "contract."

9. If an applicant used a lease to satisfy the Site Control requirement, then the RFA provided the following:

(3) Lease – The lease must have an unexpired term of at least 50 years after the Application Deadline and the lessee must be the Applicant. The owner of the subject property must be a party to the lease, or a party to one or more intermediate leases, subleases, agreements, or assignments, between or among the owner, the Applicant, or other parties, that have the effect of assigning the owner's right to lease the property for at least 50 years to the lessee.

10. Marissa Button, Florida Housing's Director of Multifamily Programs, testified that the RFA did not require a lease to have a commencement date.

11. The RFA required that Site Control documentation for leases "include all relevant intermediate contracts, agreements, assignments, options, conveyances, intermediate leases, and subleases. If the proposed Development consists of Scattered Sites, site control must be demonstrated for all of the Scattered Sites."

12. Ms. Button provided the following testimony about this requirement:

A: Florida Housing includes the requirements for that documentation to – to essentially acknowledge that there are circumstances where there may be an intermediate contract or agreement that would demonstrate one of the criteria for those different types of site control and the requirements that we



want to see that -- that chain back to the requirement itself.

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Q: So Florida Housing considers this term to broadly include all different types of potential contract agreements, et cetera; correct?

A: Yes.

Q: Could you give me an example of an intermediate contract or agreement?

A: Yes. An intermediate contract or agreement may be where – with regard to the [ ] contract, the terms require an owner of the subject property to be a seller of the subject property. And so there may be an applicant that has a contract with the seller of the property. And that seller might not be the actual owner; so there may be an intermediate contract that we need to see between the seller to the buyer and the actual owner of the subject property.

Q: And that situation that you just described, that happened in the past few years; correct?

A: I can think of one example where that happened, yes.

Q: Okay. And in that case Florida Housing agreed that the intermediate agreement was necessary to include with the site documentation; correct?

A: Florida Housing reviewed – yes. That – Florida Housing's position was there was an intermediate agreement necessary because the site control documentation provided did not include the owner of the subject property.

13. As for Florida Housing's review of Site Control documentation, the RFA provided as follows:

Note: [Florida Housing] will not review the site control documentation that is submitted with the Site Control Certification form during the scoring process unless there is a reason to believe that the form has been improperly executed, nor will it in any case evaluate the validity or enforceability of any such documentation. During scoring, [Florida Housing] will rely on the properly executed Site Control Certification form to determine whether an Applicant has met the requirement of this RFA to demonstrate site control. [Florida Housing] has no authority to, and will not, evaluate the validity or enforceability of any eligible site control documentation that is attached to the Site Control Certification form during the scoring process. During credit underwriting, if it is determined that the site control documents do not meet the above requirements, [Florida Housing] may rescind the award.

14. When questioned about Florida Housing's review of Site Control documentation, Ms. Button offered the following testimony:

Q: If you look at the next page, Page 48, at the end of Subsection A there's a note. It says Florida Housing will not review the site control during the scoring process. It will not evaluate the authority or enforceability of such documentation; correct?

A: Yes.

Q: But even though Florida Housing does not review the site documentation during scoring, it will review the documentation during the bid protest; correct?

A: Yes as it relates to the RFA requirements.

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Q: If the documents attached to a site control documentation [do] not meet the RFA criteria, then

that site control certification form would be incorrect; right?

A: Yes.

Q: And the applicant would be found ineligible; correct?

A: Yes.

15. The RFA and Ms. Button's testimony indicate that Florida Housing intended, under most circumstances, to accept the representations set forth in an applicant's Site Control documentation during the scoring process. In other words, Florida Housing did not go behind the Site Control documentation to verify the representations therein.

16. The terms of the RFA were not challenged.

Stipulated Facts Pertaining to Certain Parties

17. Douglas Gardens and Florida Housing agree that Douglas Gardens' application is ineligible for funding via the RFA.

18. Quiet Meadows and Florida Housing agree that Quiet Meadows' application is ineligible for funding via the RFA.

19. MHP and Florida Housing agree that MHP's Application is ineligible for funding via the RFA.<sup>4</sup>

20. MHP, Quiet Meadows, and Douglas Gardens agree that Fulham Terrace's application remains eligible for funding via the RFA.

21. The Willows and Florida Housing agree that the Willows Application is ineligible for funding via the RFA.

22. The Willows agrees that the HTG Astoria Application is eligible for funding via the RFA.

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<sup>4</sup> MHP, Florida Housing, Quiet Meadows, Douglas Gardens, and Fulham Terrace entered into a Settlement Agreement and Stipulation on March 26, 2021, that was entered into evidence as Fern Grove Exhibit 1.

23. SoMi Parc, Vista, and Florida Housing agree that the SoMi Parc Application is ineligible for funding via the RFA. SoMi Parc has accepted an invitation to enter credit underwriting for the same Development in RFA 2020-203 and thus cannot be funding via the RFA.

Findings Regarding the Applications of University Station and Vista

24. Florida Housing received 90 applications in response to the RFA. Those applications were processed, deemed eligible or ineligible, scored, and ranked pursuant to the terms of the RFA. On January 22, 2021, Florida Housing announced its intention to award funding to 17 applicants, subject to satisfactory completion of the credit underwriting process.

25. University Station was one of the 17 successful applicants, and University Station's Site Control documentation included: (a) a Ground Lease Agreement between the City of Hollywood, Florida ("the City"), and University Station ("the University Station I Lease"); (b) a Ground Lease Agreement between the City and University Station II, LTD ("the University Station II Lease"); and (c) an Assignment of Ground Lease Agreement assigning University Station II, LTD's interests in the Ground Lease Agreement between the City and University Station II, LTD to University Station.<sup>5</sup>

26. The University Station I Lease described its terms as follows:

This lease shall be effective as of the Effective Date, but the term shall commence on the Commencement Date and expire at 11:59 p.m. on the seventy-fifth (75th) anniversary of the Commencement Date (the "Term"), unless this lease is terminated earlier pursuant to the provisions contained herein. For purposes of this lease, the "Commencement Date" shall be the closing date of Tenant's construction financing for the development of the Phase I Project (the "Construction Financing"), but in no event later

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<sup>5</sup> The Assignment of Ground Lease Agreement between University Station and University Station II was a relevant intermediate document for demonstrating Site Control.

than June 30, 2022. Tenant's right to take physical possession of the Leased Premises shall begin on the Commencement Date.

27. The University Station II Lease between the City and University Station II described its terms as follows:

(a) This lease shall be effective as of the Effective Date, but the term shall commence on the Commencement Date and expire at 11:59 p.m. on the seventy-fifth (75th) anniversary of the Commencement Date (the "Term"), unless this lease is terminated earlier pursuant to the provisions contained herein. For purposes of this Lease, the "Commencement Date" shall be the later of the closing date of Tenant's construction loan for the development of the Project (the "Construction Loan") and the termination of the lease of the premises to Barry University, but in no event later than June 30, 2023. Tenant's right to take physical possession of the Leased Premises shall begin on the Commencement Date.

(b) Landlord and Tenant acknowledge that the leased premises are currently improved with an educational facility and adjacent ground parking that is leased to Barry University through November 23, 2021 and the Landlord may enter into an additional one-year extension of the lease to Barry University at Landlord's sole discretion. Until the Commencement Date, Landlord, or its tenant, shall be solely responsible for the operation and maintenance of the leased premises and any uses on the Leased Premises.

28. University Station's proposed Development site consists of five Scattered Sites. Barry University currently leases a building and parking spaces located on the Scattered Site described as latitude and longitude coordinates of 26.014703, -80.148572 in Question 5.d.2 of the University Station Application. This is the site described in the University Station II Lease.

29. The City and Barry University, Inc., are the parties to the Barry University Lease (“the Barry University Lease”). The Barry University Lease was executed on May 23, 2011, with a term of 10 and one-half years, which would expire on approximately November 23, 2021. With regard to its term, the Barry University Lease states that “[t]he term of this lease shall be for ten and one-half (10 ½) years commencing upon the execution of this lease. The parties will have the mutual option to renew this lease subject to City Commission and the Lessee’s Board of Directors approval.”

30. A copy of the Barry University Lease was not included in University Station’s application.

31. In contrast to the statement in the University Station II Lease that the Barry University Lease could be extended by “an additional one-year extension” at the City’s “sole discretion,” the Barry University Lease simply says that the parties have a “mutual option to renew” with no mention of a particular term.

32. Ms. Button provided the following testimony regarding the Barry University Lease:

Q: And you are aware that University Station did not submit the Barry University lease as part of its site control documentation; correct?

A: Yes.

Q: And does the existence of that Barry University lease change your position on whether University Station met the requirements in the RFA for a lease?

A: No.

Q: And why not?

A: Because the documents submitted with the application meet the terms of the RFA for a lease site control documentation.

Q: Did the existence of the Barry University lease impact whether or not the University Station site control documentation met the requirements for a lease?

A: No.

Q: As Florida Housing's corporate representative, what is your position regarding University Station's application?

A: It is eligible for funding.

33. Vista also applied for funding from the RFA. Florida Housing determined that Vista was eligible for funding, but Florida Housing did not preliminarily select Vista for funding.

34. If University Station is deemed ineligible for funding, then Vista will be selected for funding subject to the successful completion of credit underwriting.

#### Ultimate Findings

35. Vista has failed to carry its burden of demonstrating that Florida Housing's proposed award to University Station was clearly erroneous, contrary to competition, arbitrary, or capricious. Also, the greater weight of the evidence demonstrates that: (a) Florida Housing's proposed action is not contrary to the RFA's terms; and that (b) University Station will have control over the site in question.

36. The greater weight of the evidence demonstrates that the University Station Lease I Lease, the University Stations II Lease, and the assignment of University Station II's interest to University Station collectively satisfied the RFA's requirements because: (a) there is unexpired term of at least 50 years after the application deadline; (b) University Station, i.e., the lessee, was the applicant for funding; and (c) the City, as the owner of the subject property, was a party to the lease.

37. Upon considering Florida Housing’s preliminary approval of University Station’s application without the benefit of reviewing the Barry University Lease, the greater weight of the evidence demonstrates that Florida Housing was not clearly erroneous when it determined that the Barry University Lease was not a relevant intermediate lease within the meaning of the RFA. The University Station II Lease between the City and University Station II requires the lease to begin no later than June 30, 2023. Also, the City and University Station II acknowledge that Barry University’s Lease runs through November 23, 2021, and they agree that the City may extend Barry University’s lease by “an additional one-year.” Accordingly, the Barry University Lease will end prior to June 30, 2023, and University Station will have site control no later than that date. In other words, the greater weight of the evidence demonstrates that University Station has control over the site in question.

38. The analysis set forth above does not change if one considers the Barry University Lease.<sup>6</sup> Even though the Barry University Lease does not limit a renewal to one year, the lease cannot be renewed without the City’s assent, and the City agreed in the University Station II Lease that any renewal would not exceed one year. Therefore, even if one considers the terms of the Barry University Lease, the greater weight of the evidence does not demonstrate that it is a relevant intermediate document that was required to be included with University Station’s application. Again, the greater weight of the evidence demonstrates that University Station has control over the site in question.

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<sup>6</sup> As will be explained in more detail in the Conclusions of Law below, “[n]ew evidence cannot be offered to amend or supplement a party’s response or application. § 120.57(3)(f), Fla. Stat. However, new evidence may be offered in a competitive protest proceeding to prove that there was an error in another party’s application. *Intercontinental Props., supra.*” *Heritage at Pompano Housing Partners, Ltd. v. Fla. Housing Fin. Corp.*, Case No. 14-1361BID, ¶ 116 (Fla. DOAH June 10, 2014; Fla. Hous. Fin. Corp. June 13, 2014).



## CONCLUSIONS OF LAW

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

40. Section 120.57(3)(f), Florida Statutes, governs protests to proposed actions of Florida Housing and provides that:

the burden of proof shall rest with the party protesting the proposed agency action. In a competitive-procurement protest, other than a rejection of all bids, proposals, or replies, the 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 the 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.

41. With regard to the applicable standard of proof, *Colbert v. Department of Health*, 890 So. 2d 1165, 1166 (Fla. 1st DCA 2004), defined the clearly erroneous standard to mean that "the interpretation will be upheld if the agency's construction falls within the permissible range of interpretations. If, however, the agency's interpretation conflicts with the plain and ordinary intent of the law, [then] judicial deference need not be given it."

42. An agency action is "contrary to competition" when it unreasonably interferes with the objectives of competitive bidding. Those objectives have been described as follows:

[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 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.

43. As for whether a proposed award would be arbitrary or capricious, a capricious action is taken without thought or reason. *Agrico Chem. Co. v. Dep't of Envtl. Reg.*, 365 So. 2d 759, 763 (Fla. 1st DCA 1978). “An arbitrary decision is one that is not supported by facts or logic[.]” *Id.*

44. In assessing whether an agency has acted arbitrarily or capriciously, a tribunal evaluates “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 Enter. v. Dep't of Envtl. Reg.*, 553 So. 2d 1260, 1273 (Fla. 1st DCA 1989). “[I]f an administrative decision is justifiable under any analysis that a reasonable person would use to reach a decision of similar importance, it would seem that the decision is neither arbitrary nor capricious.”

45. Finally, a tribunal conducts the analyses described above via a *de novo* review. However, as explained by the Honorable F. Scott Boyd:

“[p]roceedings to challenge a competitive award are not simply a record review of the information that was before the agency. They remain ‘de novo’ in the sense that in the chapter 120 hearing the evidence adduced is not restricted to that which was earlier before the agency when making its preliminary decision. A new evidentiary record based upon the historical, objective facts is developed. *Asphalt Pavers, Inc. v. Dep't of Transp.*, 602 So. 2d 558 (Fla. 1st DCA 1992).

*Pinnacle Rio, LLC v. Fla. Housing Fin. Corp.*, DOAH Case No. 14-1398BID, ¶ 93 (Fla. DOAH June 4, 2014), *rejected in part*, (Fla. Hous. Fin. Corp. June 13, 2014).

46. As for whether new evidence can be offered for consideration under this competitive procurement *de novo* review, the Honorable Elizabeth

McArthur explained that “[n]ew evidence cannot be offered to amend or supplement a party’s response/application. § 120.57(3)(f), Fla. Stat. However, new evidence may be offered in a competitive protest proceeding to prove that there was an error in another party’s application. *Intercontinental Props., supra.*” *Heritage at Pompano Housing Partners, Ltd. v. Fla. Housing Fin. Corp.*, Case No. 14-1361BID, ¶ 116 (Fla. DOAH June 10, 2014; Fla. Hous. Fin. Corp. June 13, 2014).<sup>7</sup>

47. Turning to the instant case, Vista would receive finding if University Station were found ineligible for funding. Accordingly, no party disputed that Vista had standing to challenge Florida Housing’s preliminary decision to award funding to University Station.

48. Vista argues that the Barry University Lease should have been included in University Station’s application as a relevant intermediate document so that Florida Housing could determine when and if the aforementioned lease would end. Without that information, Vista argues that University Station cannot demonstrate that it has site control:

54. Like the redevelopment agreement in Madison Oaks,<sup>[8]</sup> the Barry Lease is relevant to demonstrate site control. It clarifies who has the right to possess the property. Currently, it is Barry University and not University Station. As of the date of the application, no documents were submitted that demonstrated that the Barry Lease would be terminated by June 30, 2023, the latest date by which University Station’s lease would purportedly commence. While the information available and included in the application is determinative, it is significant to note that no such documentation demonstrating the termination date of the Barry Lease appeared in the record in this case.

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<sup>7</sup> Accordingly, it was appropriate for the undersigned to consider the Barry University Lease in the process of reaching the ruling herein.

<sup>8</sup> This is a reference to the Recommended Order in DOAH Case No. 20-1770.

55. The property University Station is attempting to lease is currently encumbered by another lease. By the terms of the agreement with the City of Hollywood, the University Station lease cannot commence until the Barry Lease is terminated. This is consistent with well-established law that a lease provides a tenant with exclusive right to use the property, even to the exclusion of the owner except for certain circumstances. *See Turner v. Fla. State Fair Auth.*, 974 So. 2d 470, 473 (Fla. 2d DCA 2009) (“A tenant under a lease is one who has been given a possession of land which is ‘exclusive even of the landlord except as the lease permits his entry, and saving always the landlord’s right to enter to demand rent or to make repairs,’”)(quoted source omitted).

56. Because Barry University currently has possession of the property, the Barry Lease is not only a relevant agreement to demonstrate site control, but also a necessary agreement to determine when the Barry Lease will terminate so that the University Station lease can commence. The City of Hollywood does not have control of the property until the Barry Lease is terminated and cannot lease it to another party until the Barry Lease is terminated.

49. Vista’s argument overlooks that Barry University’s Lease was set to end on November 23, 2021, and the City agreed that the University Station II Lease would begin no later than June 30, 2023. The City also agreed that any renewal of the Barry University Lease would be limited to a single, one-year extension. Thus, based on the information available to it during the scoring process, Florida Housing reasonably determined that the Barry University Lease was not a relevant intermediate document and that University Station had control over the site in question.

50. Even though the Barry University Lease does not limit a lease renewal to a single, one-year term, an *ex post facto* review of the Barry University Lease does not demonstrate that it is a relevant intermediate

document because Barry University cannot unilaterally renew its lease and extend its lease beyond June 30, 2023. Therefore, even if one considers the Barry University Lease, the greater weight of the evidence demonstrates that University Station has control over the site in question.

51. Vista also argues that the leases utilized by University Station are actually contracts because no interest in the land at issue is immediately conveyed. As a result, Vista argues that the aforementioned documents should be evaluated under the RFA's requirements for contracts rather than leases. Vista further argues that University Station's application would be ineligible for funding under the correct standard:

60. It is not necessary to consider here whether a leasehold estate that springs into existence at some future date could ever be sufficient to establish site control. If the commencement of the leasehold estate were conditioned on the occurrence of some certain-to-occur future event that is wholly outside the control of the owner of the property, the tenant might plausibly argue that it has a vested interest and will have a leasehold estate upon the occurrence of that event and therefore has established site control. Such is not the case here. This document provides that the leasehold estate will not commence unless the current lease to Barry University terminates by June 30, 2023. That the Barry Lease will terminate by that date (or indeed, by any particular date) is by no means certain and has not been demonstrated. Moreover, bringing about such termination is to some extent within the control of the City of Hollywood. But the agreement between the City of Hollywood and University Station here does not obligate the City of Hollywood to cause such termination, and does not require the City of Hollywood to refrain from entering into extensions with Barry University. Accordingly, the contract between City of Hollywood and Barry University is not a lease because it does not grant to University Station a leasehold interest in the property, either presently,

or certain to occur in the future. Since it is not a lease within the meaning and intent of the site control requirements, it must be evaluated based on the requirements of a contract. Since it does not even obligate the property owner to cause the termination of the Barry Lease, much less provide for specific performance, it fails to establish site control.

52. This argument overlooks the City's agreement that the University Station II Lease would begin no later than June 30, 2023, and that any renewal of the Barry University Lease would be limited to a single, one-year extension. Vista again overlooks the fact that Barry University cannot unilaterally extend its lease beyond June 30, 2023. In sum, the greater weight of the evidence demonstrates that University Station had control over the site in question.

53. Moreover and as noted above, Vista has the burden under section 120.57(3) of proving that Florida Housing acted contrary to "the solicitation specifications." The RFA's Site Control specifications for a contract unambiguously contemplated a sales agreement. The agreements between the City, University Station, and University Station II do not amount to a sales agreement. Even though those agreements do not immediately convey a present leasehold estate to University Station, Florida Housing reasonably applied the RFA's Site Control specifications for a lease to University Station's funding application.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Florida Housing Finance Corporation enter a final order: (a) awarding funding to University Station I, LLC, via Request for Application 2020-205 subject to credit underwriting; and (b) finding that the applications submitted by Douglas Gardens IV, Ltd., MHP FL VIII, LLLP,

Quiet Meadows, Ltd, RST The Willows, LP, and Residences at SoMi Parc, LLC are ineligible for funding via Request for Application 2020-205.

DONE AND ENTERED this 17th day of May, 2021, in Tallahassee, Leon County, Florida.

*Garnett Chisenhall*

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G. W. CHISENHALL  
Administrative Law Judge  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 17th day of May, 2021.

COPIES FURNISHED:

Betty Zachem, Esquire  
Florida Housing Finance Corporation  
Suite 5000  
227 North Bronough Street  
Tallahassee, Florida 32301

Maureen McCarthy Daughton, Esquire  
Maureen McCarthy Daughton, LLC  
Suite 3-231  
1400 Village Square Boulevard  
Tallahassee, Florida 32312

Marc Ito, Esquire  
Parker Hudson Rainer & Dobbs, LLP  
Suite 750  
215 South Monroe Street  
Tallahassee, Florida 32301

Christopher Dale McGuire, Esquire  
Florida Housing Finance Corporation  
Suite 5000  
227 North Bronough Street  
Tallahassee, Florida 32301

Seann M. Frazier, Esquire  
Parker, Hudson, Rainer & Dobbs, LLP  
Suite 750  
215 South Monroe Street  
Tallahassee, Florida 32301

Michael P. Donaldson, Esquire  
Carlton Fields P.A.  
Suite 500  
215 South Monroe Street  
Tallahassee, Florida 32302

Michael J. Glazer, Esquire  
Ausley McMullen  
123 South Calhoun Street  
Post Office Box 391  
Tallahassee, Florida 32302

Brittany Adams Long, Esquire  
Radey Law Firm, P.A.  
Suite 200  
301 South Bronough Street  
Tallahassee, Florida 32301

William D. Hall, Esquire  
Dean Mead  
Suite 1200  
106 East College Avenue  
Tallahassee, Florida 32301

Craig D. Varn, Esquire  
Manson Bolves Donaldson Varn, P.A.  
Suite 820  
106 East College Avenue  
Tallahassee, Florida 32301

John L. Wharton, Esquire  
Dean Mead and Dunbar  
Suite 1200  
106 East College Avenue  
Tallahassee, Florida 32301

Daniel Ryan Russell, Esquire  
Dean Mead  
Suite 1200  
106 East College Avenue  
Tallahassee, Florida 32301

Corporation Clerk  
Florida Housing Finance Corporation  
Suite 5000  
227 North Bronough Street  
Tallahassee, Florida 32301-1329

Amy Wells Brennan, Esquire  
Manson Bolves Donaldson Varn, P.A.  
Suite 300  
109 North Brush Street  
Tampa, Florida 33602

Hugh R. Brown, General Counsel  
Florida Housing Finance Corporation  
Suite 5000  
227 North Bronough Street  
Tallahassee, Florida 32301-1329

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.