

**REQUEST FOR PROPOSALS (RFP)
PCHA-RFP-2019-3**

Request For Proposals for Development Legal Counsel

*Panama City Housing Authority
2315 Ruth Hentz Avenue
Panama City, FL 32405*

Teri Henry, Executive Director



BACKGROUND

The Panama City Housing Authority (PCHA) is requesting firms or individuals interested in serving as Development Legal Counsel to the PCHA to submit proposals for consideration. The Panama City Housing Authority is a public housing authority created pursuant to Chapter 421 of the Florida Statutes.

The PCHA desires to provide replacement and additional housing opportunities to extremely low and low to moderate-income residents of Bay County located in northwest Florida. The PCHA is a dual program authority with public housing (ACC) capacity and administers the Section 8 Housing Choice Voucher Program sponsored by the United States Department of Housing and Urban Development (HUD). The PCHA has multiple public housing properties as well as one HOME program property. Currently the PCHA desires to construct new developments on two of the properties destroyed by Hurricane Michael and consider rehabilitation of damaged public housing properties as well as looking at other new construction opportunities through a public/private partnership with a qualified development partner. An RFQ for Co-Developer was issued on April 18th, 2019 and responses are expected in early May.

The PCHA has approximately 478 Section 8 vouchers none of which are project based and an ACC capacity of 450 with 250 in service.

The selected Respondent would serve in a full service development counsel capacity, advising the PCHA as needed on legal aspects of development.

The PCHA will consider utilizing multiple debt and equity instruments including tax exempt bonds, low income housing tax credits, mortgage financing, limited partnerships, SAIL funds, HOME funds, SHIP funds and public/private collaborations as its principal forms of financing and development of existing assets and the creation of additional affordable housing. The PCHA may from time to time use proprietary funds for credit enhancements, development loans or other purposes in order to provide affordable housing in Bay County.

REQUEST FOR PROPOSALS

The PCHA is inviting proposals from experienced individuals and firms to participate in the legal development activities as described herein. The PCHA's development activities may utilize a mixed finance methodology resulting in a viable mixed income residential community containing affordable housing, which may include elderly and family units.

In keeping with the PCHA's current development plan, the PCHA is considering redevelopment, rehabilitation, and preservation activities on current sites or new construction on both current and sites to be acquired.

The PCHA reserves the right to choose whether or not to utilize a Respondent or to re-solicit for a Development Legal Counsel.

A. RESPONSE DUE DATE

Responses must be submitted by **June 12, 2019** to be eligible for consideration. Respondents should make early submission of the materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery related problems. Facsimile and e-mail responses will not be accepted. Responses received after the deadline for receipt will be deemed unresponsive and will be disqualified.

B. RECEIPT OF RESPONSES

An original and five (5) copies of the response to this RFP shall be submitted in sealed packages and marked "**Proposal for Development Legal Counsel PCHA-RFP-2019-3**". All material should be submitted in an 8 ½" x 11" format in 3 ring binders or other professional binding. All submissions must be received at the following address:

Panama City Housing Authority
Attention: Teri Henry, Executive Director
2315 Ruth Hentz Avenue
Panama City, FL 32405

The PCHA reserves the right to reject any or all responses wherever it is in the best interest of the PCHA. PCHA is an Equal Opportunity Employer. Minority and Women-owned business are encouraged to submit a proposal.

C. SCOPE OF SERVICES

The PCHA's goal is to have Development proceed as expeditiously as possible. Responses that demonstrate an ability to complete Developments on the earliest possible, realistic schedule will be favorably received by the PCHA. The Respondent shall certify its ability to start work immediately and should propose a staffing plan that describes the existing time commitments of the staff proposed to be assigned to the project and whether any of the staff will be locally based.

This RFP is intended to procure Development Legal Counsel for the PCHA and it is expected that the selected Respondent will enter into a two-year contract with an option to renew.

THE DEVELOPMENT LEGAL COUNSEL'S ROLE

The selected Development Legal Counsel will assist the PCHA with negotiating Master Development Agreements and other documents and agreements that will pertain to development activities and which may or may not involve HUD. The selected Respondent will provide legal opinions and/or recommendations that will enable the PCHA to achieve its program goals. The Respondent will also be responsible for analyzing and evaluating documents submitted to the PCHA by its development partner, lenders and investors; analyzing the legal implications of finance options; conveying to the PCHA the likely legal implications of the proposals; and, assisting the PCHA in protecting its interests and resources. The Respondent, if not a Florida based firm, will be requested to subcontract with a Florida based firm to assist with Florida filings,

provide the Florida corporate legal opinion and ensure that the work is carried out in compliance with Florida Statutes.

The Respondent will work with the PCHA's development team to review, comment and sometimes prepare business term sheets, mixed finance proposals, and the associated evidentiary documents for submission to HUD for review and approval. Development proposals and related documents shall reflect the agreed upon development and financing strategies of the PCHA.

The Respondent will be a direct advisor to the PCHA and its development team throughout the process. The work of the Respondent may include but is not necessarily limited to the following Scope of Service subject to PCHA approval:

- Author, review and/or provide comments on revitalization, development and implementation strategies using LIHTC, private debt, HUD Capital Funds and other funds with regard to legal ramifications and limitations.
- Participate in redevelopment team meetings, Board of Commissioner meetings and other community meetings as necessary.
- Coordinate with PCHA to ensure the most efficient use of counsel.
- Provide PCHA with realistic legal, co-development and/or ownership recommendations to achieve its development program goals.
- Assess current entities to ensure compliance, current use and future needs of the PCHA.

Specific Tasks

A. Evaluate the Project's Development and Ownership Structure.

Detailed analysis should be made in the following areas:

- Specific legal and tax issues as well as creation of any ownership entities conducive to PCHA's desire to be either co-developer or special limited partner in the development on PCHA owned land.
- Specific legal issues related to PCHA providing operating subsidy to a deal.

B. Review and Make Recommendations regarding development Proposals; Author Associated Evidentiary Documents including, but not limited to the following:

- **Ground Lease:** The legal document that obligates the owner of the mixed finance project to develop, operate and maintain the Public Housing units in the project as Public Housing for the term of the low income use restrictions; and

ensures that the terms of the ground lease are consistent with Federal Public Housing requirements.

- **Regulatory and Operating Agreement:** The legal document that governs the use and operation of the Public Housing units in the mixed finance project; establishes the methodology for PCHA's provision of operating subsidy on behalf of the Public Housing units; provides for the establishment and replenishment of project reserves; and describes the agreed upon method for dealing with operating deficits in the project and any future reduction in operating subsidy as approved by Congress. The Regulatory and Operating Agreement obligates the owner of the project to operate and maintain the Public Housing units as Public Housing for the term of the low-income restrictions (40 years) and prohibits a disposition of the project during the term of those restrictions without HUD approval.
- **Declaration of Restrictive Covenants:** The document that is entered into between PCHA and the owner of a mixed finance project and which is recorded in the appropriate land records. This document defines the terms for the provision of Public Housing on site and cites low income use restrictions.
- **Management Agreement:** The agreement, between the owner of the project and its management agent, which governs the management and operations of the project, including the use of a site-based waiting list and local preferences for ACC units.
- **Partnership Agreement:** The agreement to establish a limited partnership consisting of a general partner that will control the development and operation of the project, and one or more limited partners that will contribute capital to assist in financing the project, but who are not responsible for the day to day activities of the partnership.
- **Other Miscellaneous Documents:** These may include a Mixed Finance Legal Services Agreements and Loan Documents.

C. Coordinate the Submittal and Efforts to Gain HUD's Approval of Evidentiaries.

The Respondent will work with the PCHA and its team to draft and coordinate the preparation of evidentiaries and gain HUD's approval to proceed. The evidentiaries shall reflect the agreed upon redevelopment and financing strategy of the PCHA.

D. Coordinate the Financial Closing.

The Respondent shall prepare closing checklists, schedule closing meetings, and shall prepare the closing binder of documents, preferably in electronic format.

- Insure full compliance with all local, state and federal regulations regarding mixed finance regulations.

- Insure the timely and accurate preparation of evidentiaries to obtain timely approvals of same from HUD.

D. INSTRUCTIONS AND NOTICE TO RESPONDENTS:

1. SUBMISSION AND CONTENT OF RESPONSES

Inquiries: The intent of this RFP is to establish the general Scope of Services needed and to provide prospective Respondents with sufficient information to enable them to provide an acceptable response to this RFP. Every effort has been made to outline requirements, and to provide information in a format that is clear and concise. Nevertheless, questions may arise, or additional information may be needed. Questions and inquiries regarding this RFP must reference this RFP and be submitted in writing, (email or facsimile is permissible) to:

Panama City Housing Authority
2315 Ruth Hentz Avenue
Panama City, FL 32405
Attention: Kim Yates
Email: kyates@panamacityhousing.org

All inquiries must be in writing, reference this RFP and be received no later than 4:30 p.m. on June 5, 2019.

Answers will be provided as a written addendum to this RFP, issued by e-mailed to all firms who have requested the RFP.

2. SUBMISSION REQUIREMENTS

Responses that do not include all required information will be deemed unresponsive and may be disqualified.

Disadvantaged, minority and women-owned businesses are encouraged to respond to this solicitation.

Respondents must address their plan to meet the specific requirements of the Scope of Services as set forth in Section C of this RFP by including, at a minimum, the following:

PROPOSAL FORMAT

Proposals must include the following:

- a. Letter of Interest:** Discuss the firm's approach to the scope of services. The letter must list the proposer's team members and identify the primary contact

person. Please include telephone number, facsimile number, and e-mail address. The letter must be signed by an authorized principal of the proposer's firm and include a statement that the proposal will remain valid for not less than 30 days from the date of the proposal submission.

b. Technical Proposal

1. **Project Approach:** Provide a narrative which explains the firm's experience, anticipated relationship and proposed method for coordinating and communicating with PCHA, its Firms, investor counsel, HUD representatives locally and in Washington D.C., city staff and the community.

2. **Proposed Fee:** Include a fee schedule with the hourly billing rates of proposed staff.

Tasks may be negotiated as specific task orders based upon agreed hourly rates. Task orders will contain detailed descriptions of the services to be provided and a maximum price for each task.

3. **Legal Analysis:** Provide a narrative summary describing the legal issues anticipated based on PCHA's plans for procuring a development partner and submitting applications in the next FHFC funding cycle and how the Firm will participate in achieving PCHA's goal.

c. Organization, Support and Experience

Information in these areas should include:

- Organization chart, assignment and hourly billing rates of key staff with their responsibilities, including subcontracting Firms (if any).
- Key personnel listing and resumes.
- Description of staff availability.
- A list of all public housing mixed finance similar in nature to the PCHA's anticipated development efforts for which the Respondent provided development legal services and advice and a brief description of the subject transactions. Identify which if any of the transactions have closed. Include the name and telephone number of a person to contact to verify this information.
- Minimum of three references.
- Statement of non-debarment.

d. MBE/WBE, Resident Participation and Section 3:

Describe whether any members of the Respondent's team are Minority Business Enterprises and/or Women Business Enterprises (herein called MBE/WBE) certified as such and the number of Section 3 employment opportunities the team commits to, if any.

3. EVALUATION FACTORS

A committee will evaluate the proposals received under this solicitation in accordance with the minimum information requirements and the Proposal Criteria and Points Outline below. The evaluation process will be based on a weighted point system with the evaluation factor or sub-factor's relative weight listed immediately following each factor/sub-factor. The PCHA urges all interested Respondents to carefully review the requirements of this RFP.

All submissions will be evaluated by an Evaluation Committee. Submissions containing the requested information will serve as the initial basis for selection of finalists. Each submitted response has a possible score of one hundred (100) points as set forth below.

A short list of finalists will be established based upon the submitted responses. Interviews, in person or via telephone, may or may not be conducted with the finalists.

All proposals will be ranked in accordance with this point system and contract negotiations will be initiated with the highest ranked Respondent(s). If negotiations between the PCHA and the highest ranked Respondent(s) fail to produce a mutual agreement, the PCHA will terminate those negotiations and proceed with contract negotiations with the next highest ranked Respondent. At the PCHA's own discretion, the PCHA may continue that process until a mutual agreement is reached between the PCHA and a Respondent.

The PCHA reserves the right to reject any and/or all proposals.

The PCHA further reserves the right to negotiate with the Respondent(s) selected and to accept the proposal which is in the best interest of the PCHA.

No.	Criteria	Points
1.	Client and professional references (at least 3).	Mandatory
2.	Certified statement that the Respondent, or any member of the Respondent's proposed staff on this project, is not debarred, suspended, or otherwise prohibited from professional practice by any federal, state or local agency.	Mandatory
3.	Evidence of the Respondent's: a) Knowledge of current mixed finance legal structures that are gaining acceptance by the U.S. Department of Housing and Urban Development in Washington D.C. b) Knowledge of local housing and community development issues in the State of Florida. c) General knowledge and expertise with affordable housing development and finance programs.	30
4.	Evidence of the Respondent's experience and expertise within each of the areas: a) Drafting and reviewing mixed finance related documents. b) Meeting HUD requirements. c) Providing realistic legal options and/or recommendations to achieve development program goals. d) Providing legal services in the areas of Florida real estate transactions and partnership formations. e) Providing legal services on LIHTC mixed finance transactions. f) Reviewing, negotiating and assistance in gaining HUD approval of the following mixed finance evidentiary materials: Ground Lease, Regulatory and Operating Agreement, Declaration of Restrictive Covenants, Management Agreement, Developer Agreement and Partnership Agreement.	30
5.	Viability and relevance of Respondent's project approach and narrative summary of anticipated legal issues.	25
7.	Involvement/Utilization of MBE/WBE/DBE and/or Section 3 a) MBE / WBE / DBE participation and copy of appropriate certification. a) Description of Section 3 utilization, if any.	5
8.	Hourly billing rates of proposed staff.	10
	Total	100

4. COMPLETE AND ACCURATE SUBMISSION

A Respondent's failure to provide accurate information in response to this Request for Qualifications may disqualify the Respondent from further participation in the selection process.

Proposals may be corrected, modified, or withdrawn, provided that the correction, modification, or request for withdrawal is made by the Respondent, in writing, and is received by the PCHA; Panama City Housing Authority, 2315 Ruth Hentz Avenue, Panama City, FL 32405 Attn: Teri Henry, Executive Director, prior to the date and time designated in the RFP for final receipt of submissions. After such date and time, the Respondent may not change any provision of its proposal in a manner prejudicial to the interest of the PCHA and/or fair competition. Respondents are solely responsible for ensuring timely delivery by courier services; The PCHA will not accept any responses to this solicitation, after the final deadline, due to Respondent's misunderstanding of courier service hours and delivery times.

5. RETENTION

All submissions are the property of the PCHA and shall be retained by the PCHA. Responses will not be returned.

6. CANCELLATION/WAIVER

The PCHA reserves the right to cancel this RFP or to reject, in whole or in part, any and all submissions received in response to this RFP upon its determination that such cancellation or rejection is in the best interest of the PCHA. The PCHA further reserves the right to waive any minor informality in any submissions received, if it is in the public interest to do so. The decision as to who shall receive a contract award, or whether or not an award shall be made as a result of this RFP, shall be at the absolute sole discretion of the PCHA. In addition, multiple awards may be made.

7. KEY PERSONNEL

The key personnel specified by the successful Respondent will be considered essential to the work to be performed by the successful Respondent. Prior to diverting any of the key personnel for any reason(s), the contractor shall notify the PCHA in writing, at least thirty (30) calendar days in advance, and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the contract. The firm shall not change key personnel or hours to be devoted, before or after contract award, without written permission from the PCHA.

8. PART OF CONTRACT

The contents of the documents submitted by the successful Respondent may become part of any contract award at the sole discretion of the PCHA.

9. NO COMPENSATION FOR RESPONSE

Respondent will not be compensated for work or costs related to preparation and submission of this proposal. Respondents selected for further interviews and negotiations will be responsible for all expenses incurred during these processes.

10. FEDERAL CONTRACT PROVISIONS

Compliance with the contract provisions found in Appendix II to Part 200 (Contract Provisions for Non-Federal Entity Contracts Under Federal Awards) is mandatory. See attachment.

F. INITIAL REVIEW

All responses will be initially reviewed to determine compliance with the response format requirements specified within this RFP. Responses that are not complete and accurate; and, do not comply with these requirements may result in disqualification from the solicitation without further review.

G. AMENDMENT / ADDENDA

The PCHA will endeavor to provide copies of applicable amendment or addenda to all potential Respondents to whom this Request for Proposals has been provided. However, it will be the responsibility of each Respondent to make inquiry as to the existence and content of amendment or addenda, as the same shall become part of this RFP and all Respondents will be bound thereby, whether or not the amendment or addenda are actually received by the Respondent.

H. PCHA'S OPTIONS

The PCHA reserves the right to cancel this RFP, or to reject, in whole or in part, any and all submissions received in response to this RFP, upon its determination that such cancellation or rejection is in the best interest of the PCHA. The PCHA further reserves the right to waive any minor informality, or the failure of any Respondent to comply therewith, if it is in the public interest to do so. The PCHA will pay no compensation to any Respondent for any costs related to preparation or submittal of the qualifications.

The PCHA will reject the qualifications of any Respondent who is suspended and/or debarred by HUD from providing services to public housing authorities, and reserves the right to reject the proposal of any Respondent who has previously failed to perform any contract properly for the PCHA.

The determination of the criteria and process whereby submissions are evaluated and the decision as to whom shall receive a contract award shall be at the sole and absolute discretion of the PCHA.

By submitting a response to this RFP, Respondent acknowledges and agrees to the following conditions:

- All submissions in response to this RFP become the property of the PCHA. As such, all submissions are public records, subject to public review.
- The PCHA will make no determination as to the adequacy or accuracy of any system, process, procedure or representation made by any Respondent. As such, pre-qualification does not infer approval of any such systems, processes, procedures or representations.
- No Respondent shall initiate contact with any member of the Board of Commissioners of the PCHA regarding this RFP until after completion of the selection process and execution of a contract. If any Respondent has any reason, not related to this RFP, to contact any of the above parties, they will be required to disclose to that party that they are a Respondent in this solicitation. Failure to adhere to these requirements may result in disqualification from the solicitation.
- Respondent shall not have employed or retained any company or person, other than a bona fide employee working solely for the Respondent to solicit or secure the execution of a contract with the PCHA. Respondent certifies that they have not paid or agreed to pay any person, company, corporation, individual or firm other than a bona fide employee working solely for the Respondent, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award of or the making of a contract from this solicitation.

RESPONDENT PROFILE FORM

Firm Name _____

Business Address _____

City _____ State _____ Zip Code _____

Names and Titles of Two Contact Persons:

1. _____ Phone (____) _____
Name Title

2. _____ Phone (____) _____
Name Title

Submittal is for: Parent Company Division
 Subsidiary Branch Office

Type of Firm: Corporation
 Partnership
 Sole Ownership
 Joint Venture

Name & Address of Parent Company, if applicable:

Former Firm Name(s), if applicable:

Please indicate if your firm is a recognized Minority Business Enterprise.

Yes No

If yes, please indicate the appropriate category:

American Indian Female-Owned Spanish Surname
 African-American Asian-American Other

Respondent Profile Form

Page two

Federal Employer Identification Number _____

Year Firm was established _____

AUTHORIZATION

I hereby verify that the questions listed in the Respondent Profile Form and all statements therein contained are true and correct

Dated this _____ day of _____, 2019.

By _____

Name _____

Title _____

**ACKNOWLEDGMENT OF RECEIPT
OF
AMENDMENT OF SOLICITATION or
ADDENDA TO SOLICITATION
FOR DEVELOPMENT IN PANAMA CITY FLORIDA**

1. **AMENDMENT NUMBER(S) and dates issued:** _____

2. **ADDENDA NUMBER(S) and dates issued:** _____

3. **ISSUED BY:** The Panama City Housing Authority (the "PCHA")

4. **BRIEF DESCRIPTION OF AMENDMENT(S):**
(attach copy(s) of Amendment(s) as issued by the PCHA)

4. **BRIEF DESCRIPTION OF ADENDA(S):**
(attach copy(s) of Amendment(s) as issued by the PCHA)

5. THE ABOVE SOLICITATION IS AMENDED OR CLARIFIED AS SET FORTH IN THE ATTACHED AMENDMENT(S) OR ADDENDA(S) AS ISSUED BY THE PCHA. RESPONDENTS MUST ACKNOWLEDGE RECEIPT OF THIS/THESE AMENDMENT(S) OR ADDENDA(S) PRIOR TO THE HOUR AND DATE SPECIFIED FOR RECEIPT OF PROPOSALS, BY SIGNING THIS FORM BELOW.

EXCEPT AS PROVIDED HEREIN, ALL TERMS AND CONDITIONS OF THE SOLICITATION REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.

ACKNOWLEDGMENT OF RECEIPT:

Name

Title

Signature

Date

CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40

U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or sub-recipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and sub-grants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials.