652.236-72 Statement of Qualifications for the Omnibus Diplomatic Security and Antiterrorism Act.

As prescribed in 636.570(b), insert the following provision:

Statement of Qualifications for the Omnibus Diplomatic Security and Antiterrorism Act (FEB 2015)

(a) This solicitation is subject to Section 402 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (P.L. 99–399; 22 U.S.C. 4852). The Act limits certain construction projects abroad to United States persons or United States joint venture persons. This Statement of Qualifications shall be used to determine if a bidder/offeror meets the definition of a “United States person” or a “United States joint venture person” .

(b) *Definition.* As used in this provision—

U.S. person means a company, partnership, or joint venture that the Government determines, after consideration of all available information, including but not limited to that provided by the bidder/offeror in response to this solicitation, to be qualified pursuant to Section 402.

(c) *Representation.* The bidder/offeror represents as part of its bid/offer that it □ does □ does not meet the qualifications as a U.S. person as set forth in Section 402 of the Act.

[*Complete a Statement of Qualifications for Purposes of Determining Status as a U.S. Person if the offeror represents that it is eligible. See paragraph (d) of this provision.*]

Warning: Any material misrepresentation made in the Statement of Qualifications may be the basis for disqualification of a bidder/offeror and reference for consideration of suspension or debarment or for prosecution under Federal law (cf. 18 U.S.C. 1001). Bidder/offeror qualifications will be determined primarily on the basis of information submitted in the Statement of Qualifications, including attachments thereto, but the Government may, at its discretion, rely on information contained elsewhere in the bidder's/offeror's bid/proposal or obtained from other sources.

(d) *Statement of Qualifications for Purposes of Determining Status as a U.S. Person (22 U.S.C. 4852).* A bidder/offeror that represents that it is a U.S. person must provide the following information.

Statement of Qualifications for Purposes of Determining Status as a U.S. Person (22 U.S.C. 4852)

Name and address of U.S. person organization providing this information:

Introduction. Section 402 of the Omnibus Diplomatic Security and Antiterrorism Act (Public Law 99–399) provides that a “United States person” or a “qualified United States joint venture” must meet certain requirements, listed in sections 402(c)(2) and (3) of the Act, to be eligible to compete. To assist business entities to determine whether they qualify as a U.S. person or U.S. joint venture person, guidance is hereby provided. For ease of reference, the statutory language is quoted

immediately before the definitions that apply to it. Space for the required information is provided immediately following each definition.

Note:

The Statement of Qualifications shall provide information correctly applicable to the U.S. person whose qualifications are being certified, and shall not include information pertaining to corporate affiliates or subsidiaries. Organizations that wish to use the experience or financial resources of any other legally dependent organization or individual, including parent companies, subsidiaries, or other related organizations, must do so by way of a joint venture. A prospective bidder/offeror may be an individual organization or firm, a formal joint venture in which the co-venturers have reduced their arrangement to writing, or a de facto joint venture where no formal agreement has been reached, but the offering entity relies upon the experience of a related U.S. firm that guarantees performance. To be considered a "qualified United States joint venture person," the joint venture must have at least one firm or organization that itself meets all the requirements of a U.S. person listed in Section 402. By signing this bid/proposal, the U.S. person co-venturer agrees to be individually responsible for performance of the contract, notwithstanding the terms of any joint venture agreement.

1. *Section 402(c)(2)(A):* "The term 'United States person' means a person which—(A) is incorporated or legally organized under the laws of the United States, including the District of Columbia, and local laws."

Definitions for purposes of Section 402 determinations of eligibility—

Incorporated means the successful de jure incorporation of a business organization pursuant to the laws of any United States jurisdiction or component thereof.

Legally organized means the legally recognized existence of an organization other than a de jure corporation (e.g., a partnership) under the laws of any United States jurisdiction or component thereof. Only organizations that have a legal status, including the right to bring suit, to sign contracts, and to hold property under the law of the jurisdiction where they are doing business will qualify as legally organized. A natural person who is a United States citizen acting in his or her entrepreneurial capacity will be deemed to be a "person legally organized" within the scope of this definition, provided that the prospective bidder/offeror holds all required licenses to do business in the jurisdiction where he or she is located.

United States means any jurisdiction that is one of the fifty States, the District of Columbia, a United States territory, a United States possession, or the Commonwealths of Puerto Rico and the Northern Mariana Islands.

Question 1. The organization seeking eligibility under Section 402 is incorporated or is legally organized under the laws of what jurisdiction?

2. *Section 402(c)(2)(B):* "The term 'United States person' means a person which—(B) has its principal place of business in the United States."

Definitions for purposes of Section 402 determinations of eligibility—

Principal place of business means the main location of the prospective bidder/offeror. For purposes of this section, a prospective bidder/offeror shall identify only one principal place of business, and such location shall include at least the offices of the chief operating officer and headquarters staff.

The named location must be a United States jurisdiction from which a tax return has been filed or will be filed during the calendar year in which the prospective bidder/offeror submits this bid/offer.

United States means any jurisdiction that is one of the fifty States, the District of Columbia, a United States territory, a United States possession, or the Commonwealths of Puerto Rico and the Northern Mariana Islands.

Question 2(a). The organization seeking eligibility has its principal place of business in what city and state?

Question 2(b). What kind of tax return was or will be filed, and in what jurisdiction, during the current calendar year?

(i) Jurisdiction:

(e.g., federal, state, city)

(ii) Type of return (e.g., income tax, franchise tax, etc.). Include all that apply:

3. *Section 402(c)(2)(C):* "The term 'United States person' means a person which has been incorporated or legally organized in the United States—

(i) for more than 5 (five) years before the issuance date of the invitation for bids or request for proposals with respect to a construction project under subsection (a)(1); and,

(ii) for more than 2 (two) years before the issuance date of the invitation for bids or request for proposals with respect to a construction or design project abroad that involves technical security under subsection (a)(2)."

Definitions for purposes of Section 402 determinations of eligibility—

Has been incorporated or legally organized means that the organization can show continuity as an ongoing business. Organizations that have changed only their names meet the continuity requirement of this subsection. Organizations that have been bought, sold, merged, or otherwise substantially altered or enlarged their principal business activities will have the burden of proving that there have been ongoing operations by the same business entity for the required period of time. If the successor entity has acquired all of the assets and liabilities of the predecessor business and the predecessor business has no further existence, the successor may claim the incorporation date of the predecessor. In any other circumstance, the prospective bidder/offeror must show that the law of the jurisdiction in which it operates regards the prospective bidder/offeror as the complete successor in interest of the predecessor business for purpose of contractual obligations.

Issuance date means the date in Block 3 of the Standard Form 1442 accompanying this solicitation.

Years means calendar years measured from day of the month to day of the month. For example, January 1, 2002 through December 31, 2002 is one calendar year, as is July 1, 2002 through July 1, 2003.

Question 3:

(i) On what date was the organization seeking eligibility incorporated or legally organized?

_____

(ii) If this date is less than the required number of years before the issuance date, on the basis of what documentation does the organization seeking eligibility claim that it has been in business for the requisite period of time?_____ (Identify, and forward copies as an Attachment to this Statement. This material may include such items as certificates of incorporation, partnership agreements, resolutions of boards of directors, etc.).

4. *Section 402(c)(2)(D):* "The term 'United States person' means a person which has performed within the United States or at a United States diplomatic or consular establishment abroad administrative and technical, professional, or construction services similar in complexity, type of construction, and value to the contract being bid."

Definitions for purposes of Section 402 determination of eligibility—

Administrative and technical, professional, or construction services means the kind of work in which the prospective bidder/offeror is interested. If the proposed contract is for construction management services, the prospective bidder/offeror will be expected to demonstrate construction management expertise. In general, "administrative" means the capacity or ability to manage; "technical" means the specific skills peculiar to the type of work required; "professional" means expert services resulting from advanced training in the type of work required; and "construction" experience if it has not directly performed all of the actual construction activities. Thus, an entity whose only construction work experience was performed by its legally distinct subsidiary or parent will not be considered to have construction experience.

Complexity means the physical size and technical size and demands of the project. "Performed" means projects that have been fully completed by the prospective bidder/offeror and accepted by the owner or other party to the transaction. Projects still in progress have not yet been performed for purposes of this definition.

Type of construction means the overall nature of the facilities to be built, including the kinds of materials to be used. Thus, if the contract will require the construction of a multi-story office building, the prospective bidder/offeror will be expected to demonstrate experience with facilities of this type.

Value means the total contract price of the project, not to the profit or loss to the bidder/offeror.

Within the United States means a United States jurisdiction that is the place where the subject matter of the contract or other arrangement was in fact completed. It does not mean the place where the contract or other arrangement was negotiated or signed. The term "United States" means any jurisdiction that is one of the 50 states, the District of Columbia, a United States territory, a United States possession, or the Commonwealth of Puerto Rico and the Northern Mariana Islands.

Question 4: List on this page, and an attachment (if necessary), one or more similar projects completed by the prospective bidder/offeror. For each project, provide the following information:

Location:

(City and State, or Country)

Type of service:

(administrative, etc.)

Complexity:

(office building, etc.)

Type of construction:

Value of project:

If the prospective bidder/offeror's participation was as a partner or co-venturer, indicate the percentage of the project performed by the prospective offeror: _____ %

5. *Section 402(c)(2)(E):* "The term 'United States person' means a person which—with respect to a construction project under subsection (a)(1)—has achieved a total business volume equal to or greater than the value of the project being bid in 3 years of the 5-year period before the date specified in subparagraph (C)(i)."

Definitions of purposes of Section 402 determination of eligibility—

3 years of the 5-year period before the date specified in subparagraph (C)(i) means the three to five calendar year period immediately preceding the issuance date of this solicitation.

Total business volume means the U.S. dollar value of the gross income or receipts reported by the prospective bidder/offeror on its annual federal income tax returns.

Years means the business year of the prospective bidder/offeror, as reflected on its annual federal income tax returns.

Question 5: Please complete the information below for at least three of the five listed years.

The gross receipts for the business year: (list year and amount).

The gross receipts for the business year: (list year and amount).

The gross receipts for the business year: (list year and amount).

The gross receipts for the business year: (list year and amount).

The gross receipts for the business year: (list year and amount).

6. *Section 402(c)(2)(F):* "The term 'United States person' means a person which—(i) employs United States citizens in at least 80 percent of its principal management positions in the United States; (ii) employs United States citizens in more than half of its permanent, full-time positions in the United States; and (iii) will employ United States citizens in at least 80 percent of the supervisory positions on the foreign buildings office project site."

Definitions for purposes of Section 402 determinations of eligibility—

In the United States refers to those positions that the prospective bidder/offeror maintains within all jurisdictions which are one of the 50 states, the District of Columbia, a United States territory, a

United States possession, or the Commonwealths of Puerto Rico and the Northern Mariana Islands.

Permanent, full-time positions means positions with the prospective bidder/offeror that are intended to be indefinite, as opposed to limited, seasonal, or project-duration periods. The term 'full-time' refers to positions in which the occupants are expected to and ordinarily work 40 hours a week. The term 'permanent, full-time positions' covers the portion of the prospective bidder's/offeror's workforce that continues to be employed without regard to the fluctuating requirements of production or projects.

Principal management positions refers to chief operating officer and those management officials reporting directly to him or her. In the case of a partnership, the term refers to every general partner. In the case of a corporation, the term refers to those officers of the corporation who are active in running its day-to-day operations. Members of corporation boards of directors who do not have operational responsibilities do not occupy "principal management positions" simply by virtue of their service on the board. In all cases, the term "principal management positions" also includes the position or positions held by the individual or individuals who will have primary corporate management oversight responsibility for this contract if the prospective bidder/offeror is awarded the contract. Each prospective bidder/offeror is responsible for listing all of its principal management positions and identifying their current occupants by name and citizenship.

Supervisory positions means all positions with significant authority to direct the work of others as well as those for which access to classified or controlled documents is required. Such positions will be identified in each contract.

United States citizen means natural persons with United States citizenship by virtue either of birth or of naturalization.

Question 6(a): The bidder/offeror has the following staff:

(i) Principal management positions in the United States:

Chief Operating Officer:

(name)

(citizenship)

(ii) For each individual reporting directly to the above-named Chief Operating Officer, list position, name, and citizenship:

Position:

Name:

Citizenship:

(iii) Individual(s) expected to have primary management oversight responsibility for contract if it is awarded:

(name)

(citizenship)

Question 6(b): Number of permanent, full-time positions in the United States: _____

Question 6(c): Number of United States citizens currently employed in permanent, full-time positions in the United States: _____

Question 6(d): Certification of intent to employ U.S. citizens in a minimum of 80 percent of the supervisory positions identified by the Government on this project:

I so certify:

(signature)

(name typed or printed)

(position)

(date)

7. *Section 402(c)(2)(G):* "The term 'United States person' means a person which has the existing technical and financial resources in the United States to perform this contract."

Definitions for purposes of Section 402 determinations of eligibility—

Existing technical and financial resources means the capability of the prospective bidder/offeror to mobilize adequate staffing and monetary arrangements from within the United States sufficient to perform the contract. Adequate staffing levels may be demonstrated by presenting the resumes of current United States citizens and resident aliens with skills and expertise necessary for the work in which the prospective bidder/offeror is interested or some other indication of available United States citizen or permanent legal resident human resources. Demonstration of adequate financial resources must be issued by entities that are subject to the jurisdiction of United States courts and have agents located within the United States for acceptance of service of process.

Question 7: Submit, as an Attachment to this Statement, materials demonstrating existing technical and financial resources in the United States.

8. *Section 402(c)(3):* "The term 'qualified United States joint venture person' means a joint venture in which a United States person or persons owns at least 51 percent of the assets of the joint venture."

Definitions for purposes of Section 402 determinations of eligibility—

Assets means tangible and intangible things of value conveyed or made available to the joint venture by the co-venturers.

Joint venture means a formal or *de facto* arrangement by and through which two or more persons or entities associate for the purpose of carrying out the prospective contract. Prospective

bidders/offerors are advised that a joint venture may not be acceptable to projects requiring a Department of Defense facility security clearance because each co-venturer may post particular problems in obtaining security clearances. To be acceptable, all members of a joint venture must be individually and severally liable for the full performance of and resolution of any and all matters arising out of the contract, notwithstanding any provision of the joint venture agreement of law of the jurisdiction under which the joint venture was created.

Question 8(a): The bidder/offeror is is not a joint venture.

Question 8(b): If the bidder/offeror is a joint venture, the U.S. person participant is:

(name)

(address)

Question 8(c): If the bidder/offeror is a joint venture, the names and countries of citizenship for all co-venturers are as follows:

(name)

(citizenship)

(name)

(citizenship)

(name)

(citizenship)

Question 8(d): If the bidder/offeror is a joint venture, the U.S. person will own at least 51 percent of the assets of the joint venture.

I so certify:

(signature)

(name typed printed)

(position)

(title)

(e) *Signature:* By signing this document, the offeror indicates that to the best of his or her

knowledge, all of the representations and certifications provided in response to the questions contained in this Statement of Qualifications are accurate, current, and complete and that the offeror is aware of the penalty prescribed in 18 U.S.C. 1001 for making false statements.

(End of provision)

Parent topic: Subpart 652.2—Text of Provisions and Clauses