# 652.237-73 Statement of Qualifications for Preference as a U.S. Person.

As prescribed in 637.110(c), insert the following provision:

Statement of Qualifications for Preference as a U.S. Person (APR 2004)

(a) This solicitation is subject to Section 136 of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (22 U.S.C. 4864). The Act encourages the participation of United States persons and qualified United States joint venture persons in the provision of local guard services overseas, and provides for a preference for eligible offers.

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

*Eligible offer* means an offer that (1) is otherwise responsive to the solicitation; and (2) contains a fully prepared Statement of Qualifications (see paragraph (d) of this provision), which upon review is determined by the Government to meet the requirements of Section 136 for assignment of preference as a U.S. person.

*Preference* means subtraction by the Government of ten percent (10%) from the total evaluated price of an offer.

*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 offeror in response to the solicitation, to be qualified for assignment of preference pursuant to Section 136.

(c) *Representation.* The offeror represents as part of its offer that it is, is not eligible for preference as a U.S. person. [*Complete a Statement of Qualifications for Purposes of Obtaining Preference 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 an offeror and reference for consideration of suspension or debarment or for prosecution under Federal law (cf. 18 U.S.C. 1001). The Government will determine offeror qualifications 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 offeror's proposal or obtained from other sources.

(d) *Statement of Qualifications for Purposes of Obtaining Preference as a U.S. Person (22 U.S.C. 4864).* An offeror that represents that it is eligible for preference as a U.S. person must provide the following information. This Statement of Qualifications must be a complete and certified document, and submitted as a separate Volume 5, with all necessary attachments, as defined in Section L of this solicitation.

Statement of Qualifications for Purposes of Obtaining Preference as a U.S. Person (22 U.S.C. 4864)

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

*Introduction.* Section 136 of the Foreign Relations Authorization Act for Fiscal Years 1990 and 1991,

Public Law 101–246 (22 U.S.C. 4864), as amended, provides that a "United States person" or a "qualified United States joint venture" must meet certain requirements, listed in the Act, to be eligible for the statutory preference. To assist business entities to determine whether they qualify as a U.S. person or U.S. joint venture person entitled to preference under Section 136, guidance is hereby provided. Only those prospective offerors submitting a properly completed and certified Volume 5 with their initial proposals will be considered in the determination of eligibility for assignment of preference as a U.S. person or U.S. joint venture person. For ease of reference, 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 another organization or individual, including parent companies, subsidiaries, or local, national or offshore organizations, must do so by way of a joint venture. The contract resulting from this solicitation shall not allow subcontracting. A prospective offeror may be a sole proprietorship, a formal joint venture in which the co-venturers have reduced their arrangement to writing, or a de facto joint venture with no written agreement. To be considered a "qualified joint venture person," the joint venture must have at least one firm or organization that itself meets all the requirements of a U.S. joint venture person listed in Section 136. By signing this 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 136(d)(1):* "The term 'United States person' means a person which—(A) is incorporated or legally organized under the laws of the United States, including the laws of any State, locality, or the District of Columbia."

Definitions for purposes of Section 136 determinations of eligibility—

*Incorporated* means the state of legal recognition as an artificial person that may be afforded to a business entity pursuant to the laws of any United States jurisdiction or component thereof.

*Legally organized* means the state of legal recognition that may be afforded to a business entity that is other than a corporation pursuant to the laws of any United States jurisdiction or component thereof. This is the least form of legal recognition that will qualify an offeror for this preference. Only those prospective offerors that have legal status, including the right to bring suit, to sign contracts, and to hold property under the law of the jurisdiction under which 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 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 Commonwealth of Puerto Rico and the Northern Mariana Islands.

*Question 1.* The organization seeking eligibility under Section 136 is incorporated or is legally organized under the laws of what jurisdiction?

2. *Section 136(d)(1):* "The term 'United States person' means a person that—(B) has its principal

place of business in the United States."

Definitions for purposes of Section 136 determinations of eligibility—

*Principal place of business* means the geographic location of the main office or seat of management of the prospective offeror. For purposes of this Statement, a prospective 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 in which the prospective offeror may bring suit and be sued and in which service of process shall be accepted.

*Question 2(a).* The organization seeking eligibility has its principal office 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? The jurisdiction identified herein need not be the same jurisdiction identified in Question 2(a).

(i) Jurisdiction:

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

3. *Section 136(d)(1):* "The term 'United States person' means a person which—(C) has been incorporated or legally organized in the United States—(i) for more than 2 (two) years before the issuance date of the invitation for bids or request for proposals with respect to the contract under subsection (c) of this section."

Definitions for purposes of Section 136 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 entity and the predecessor entity has no further existence, the successor may claim the incorporation or legal organization date of the predecessor. In any other circumstance, the prospective offeror must show that the law of the jurisdiction in which it operates regards the prospective offeror as the complete successor in interest of the predecessor entity for purpose of contractual obligations.

*Issuance date* means the date in Block 5 of the Standard Form 33 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 two 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).

4. *Section 136(d)(1):* "The term 'United States person' means a person which—(D) has performed within the United States or overseas security services similar in complexity to the contract being bid."

Definitions for purposes of Section 136 determination of eligibility—

*Complexity* means the physical size or extent of the effort, as described in Section B and Exhibit A of this solicitation; combined with the required quality of the effort as described in Sections C and H of this solicitation.

*Overseas* means within any jurisdiction that is not a part of the United States as defined below.

*Performed* means contracts that have been fully completed by the prospective offeror and accepted by the other party to the transaction. Contracts still in progress have been performed for purposes of this definition if performance in complexity to the contract being bid has been ongoing for at least one year. Contracts need not have been with the U.S. Government.

*Security services* means work of a kind as to fall within or compare closely with those described in the Statement of Work in Section C of this solicitation. An entity whose only security services experience was performed by its legally distinct parent or subsidiary organization will not be considered to have security services experience.

*Within the United States* means within the legal geographic boundaries of a United States jurisdiction that is the place where the subject matter (e.g., services) of the contract or other arrangement was in fact completed. The place where the contract or other arrangement was negotiated or signed is not relevant to this definition.

*Question 4:* Describe in an Attachment to this Statement (*see* L.1.3.5), the qualifying similar contracts or other arrangements performed by the prospective offeror. Provide required information on a sufficient number of arrangements to show that similar services have been performed overseas or in the United States. The description must consist of the following information on each arrangement, which shall be submitted as an Attachment to this Statement:

*Location:* (city and state or country).

Type of service: (for example, stationary guards, roving patrol, quick-reaction force, etc.).

Complexity: (type of facilities guarded, and number or extent of facilities, number of guards, etc.).

5. *Section 136(d)(1):* "The term 'United States person' means a person which—(E) with respect to the contract under subsection (c) of this section, 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)."

Definitions of purposes of Section 136 determination of eligibility—

*3 years of the 5-year period before the date specified in subparagraph (C)* 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 offeror on its annual federal income tax returns.

*Years* means calendar years.

*Question 5:* Describe in an Attachment to this Statement (*see* L.1.3.5), for at least three of the five twelve-month income tax periods (fiscal years) defined below, the gross receipts of the organization seeking eligibility.

(i) The fiscal year ending during the calendar year that includes the date of this solicitation.

(ii) The fiscal year ending in the calendar year immediately prior to the calendar year that includes the date of this solicitation.

(iii) The fiscal year ending in the calendar year two years before the calendar year that includes the date of this solicitation.

(iv) The fiscal year ending in the calendar year three years before the calendar year that includes the date of this solicitation.

(v) The fiscal year ending in the calendar year four years before the calendar year that includes the date of this solicitation.

An entity will be deemed to have met this requirement if the total cumulative business volume for the three years presented exceeds the contract price at time of award under this solicitation for the full term for which prices are solicited, including any option periods.

6. *Section 136(d)(1):* "The term 'United States person' means a person which " (F)(i) employs United States citizens in at least 80 percent of its principal management positions in the United States; and (F)(ii) employs United States citizens in more than half of its permanent full-time positions in the United States."

Definitions for purposes of Section 136 determinations of eligibility—

*Full-time* (positions) means those personnel positions in which the occupants are expected to and ordinarily work for 40 or more hours per week.

*In the United States* refers to those personnel positions that are encumbered as of the date of this solicitation and that the prospective offeror maintains in geographic locations within the jurisdictions defined above as constituting the United States.

*Permanent* (positions) means personnel positions that are intended to be indefinite as to length of employment, as opposed to limited, seasonal, or project-length personnel appointments.

*Permanent, full-time positions* means that portion of the prospective offeror's workforce that continues to be employed without regard to the ordinary fluctuations of production or projects.

*Principal management positions* means those personnel positions including at least the chief executive officer (if any) and the chief operating officer (whether by title or by function) of the organization seeking eligibility, together with all those management officials who constitute the

highest levels of management authority within the organization. In the case of a partnership, all general partners are deemed to hold principal management positions. In the case of a corporation, those officers of the corporation who are principally responsible for the day-to-day operation of the corporation. Members of corporation boards of directors 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 in the United States who will have primary corporate management oversight responsibility for this contract if the prospective contractor is awarded the contract.

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

*Question 6(a):* The organization seeking eligibility shall list all of its principal management positions and identify the current occupant of each listed position by name and citizenship. Provide the information as an Attachment to this Statement in the following format:

(i) Principal management positions in the United States:

Chief Executive Officer (if any):

(name)

(citizenship)

Chief Operating Officer:

(name)

(citizenship)

(ii) For each additional corporate officer having principal responsibility for the day-to-day operations of the corporation, list position, name, and citizenship.

Position:

Name:

Citizenship:

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

(name)

(citizenship)

*Question 6(b):* Number of permanent, full-time, currently encumbered personnel positions that are located in the United States (good faith estimates acceptable): _____

*Question 6(c):* Number of United States citizens currently employed in permanent, full-time positions that are located in the United States (good faith estimates acceptable): _____

7. *Section 136(d)(1):* "The term 'United States person' means a person which—(G) has the existing technical and financial resources in the United States to perform the contract."

Definitions for purposes of Section 136 determinations of eligibility—

*Existing technical and financial resources* means technical and financial capability within the United States to mobilize adequate staffing, equipment and organizational arrangements to perform the contract. Adequate technical resources may be demonstrated by presenting an organization chart, and résumés of current officers and employees in the United States who possess skills and expertise necessary to provide management and oversight of the work. Other indicia will be considered if offered to demonstrate that the prospective offeror has available resources in the United States adequate to provide home office management and oversight of the work. Adequate financial resources may be demonstrated by proof of possession of a combination of net worth, bank lines of credit, or bank guarantees. If lines of credit or bank guarantees are used to demonstrate adequate financial resources, they must be from entities within the United States.

*Question 7:* Submit, as an Attachment to this Statement, materials demonstrating existing technical and financial resources in the United States (*see* L.1.3.5).

8. *Section 136(d)(2):* "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 136 determinations of eligibility—

*Assets* means tangible and intangible things of value conveyed or made available to the joint venture by the co-venturers. To be qualified for U.S. preference, 51 percent of the assets of the joint venture must be owned by the U.S. person co-venturer(s).

*Joint venture* means a formal or de facto association of two or more persons or entities to carry out a single business enterprise for profit, for which purpose they combine their property, money, effects, skills, and knowledge. To be acceptable, all members of a joint venture must be jointly and severally liable for full performance and resolution of matters arising out of the contract.

*Question 8(a):* The prospective offeror is is not a joint venture.

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

(name)

(address)

*Question 8(c):* If the prospective 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 prospective 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: (name)

(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