

**CERTIFICATIONS RELEVANT TO PUBLIC LAW 99-399**

Statement of Qualifications for Purpose of Section 402 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Public Law 99-399)

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

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Name and address of firm or organization seeking pre-qualification, if different:

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Introduction

Section 402 of the Omnibus Diplomatic and Antiterrorism Act of 1986 provides that a “United States person” must meet certain requirement, listed in subsections 402 (c) (2) and (3) of the Act, to be eligible for the statutory preference. To assist individuals to determine whether or not they qualify as a U.S. person or U.S. joint venture person entitle to preference under Section 402, guidance is provided on this pre-qualification form.

For ease of reference, the statutory language will be quoted immediately before the definitions that apply to it. Space for the information requested is provided immediately following definitions. The Department of State reserves the right, in its sole discretion, to interpret and apply the definitions to the information provided by each prospective offeror.

**IMPORTANT NOTE:** 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 firms, must do so by way of a joint venture. A prospective offeror may be an individual organization or firm, a formal joint venture (where the arrangement among the co-venturers has been reduced to writing), or “de facto” joint venture (where no formal agreement has been reached, but the offering entity relies upon the experience of a related U.S. person firm that guarantees performance). To be considered a “qualified United States joint venture person,” every 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. The U.S. person co-venturer will be required to sign a guarantee making the U.S person individually responsible for performance of any contract awarded, 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:**

**“INCORPORATED”**—This term refers to the successful *de jure* incorporation of a business organization pursuant to the laws of any United States jurisdiction or component thereof.

**“LEGALLY ORGANIZED”**—This term refers to the legally recognized existence of a prospective offeror’s organization other than a *de jure* corporation (e.g., a partnership) under the laws of any United States jurisdiction or component thereof. Only prospective offerors 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/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/she is located.

**“UNITED STATES”**—For purposes of Section 402, the term “United States” shall mean any jurisdiction that is 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 North Mariana Islands.

Question 1: The organization seeking pre-qualification is [ ] incorporated, [ ] legally organized under the laws of \_\_\_\_\_.

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:**

**“PRINCIPAL PLACE OF BUSINESS”**—This term refers to the main location of the prospective offeror. For purposes of this section, a prospective offeror must identify only one principal place of business and such location must include at least the offices of the chief operating officer and headquarters staff. Such 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 offeror submits this section 402 (c) information.

**“UNITED STATES”**—For purposes of Section 402, the term “United States” shall mean any jurisdiction that is 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 North Mariana Islands.

Question 2(a): The organization seeking pre-qualification has its principal place of business in \_\_\_\_\_ (city, state).

Question 2(b): Kind of United States jurisdiction income tax return filed or expected to be filed during the current calendar year:

- (i) \_\_\_\_\_ jurisdiction (e.g., federal, state, city)
  - (ii) \_\_\_\_\_ type of return (e.g., income tax, franchise tax, etc.)
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 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 years before the issuance date of the invitation for bids or request for proposals with respect to a construction or design project that involves physical or technical security under subsection (a)(2).”

**Definitions:**

**“HAS BEEN INCORPORATED OR LEGALLY ORGANIZED”**—This term refers to the required continuity of ongoing business. Organizations that have changed only their names have not had any disruption in continuity.

Organizations that have been bought, sold, merged, or otherwise substantially altered or enlarged their principle 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 the assets and liabilities of a preceding business and the predecessor business has no further existence, the successor may claim the incorporation date of the preceding business. 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 preceding business for purposes of contractual obligations.

**“YEARS”**—The term ‘years’ refers to calendar years measured from day of the month to day of the month. For example, January 1, 1997 through December 31, 1997 is one calendar year, as is July 1, 1997 through June 30, 1998.

**“ISSUANCE DATE”**—The Department expects that the issuance date of this solicitation will be in December, 1998.

Question 3: The organization seeking pre-qualification was incorporated or legally organized on \_\_\_\_\_.

If less than the required number of years preceding the date given above (see Section 402 (c)(2)(C) for issuance of the solicitation, the organization seeking pre-qualification claims that it has been in business for the requisite period of time based on the material attached at Tab A: \_\_\_\_\_ (identify). (Material can 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 administrative and technical, professional, or construction services similar in complexity, type of construction, and value to the project being bid.”

**Definitions:**

**“PERFORMED”**—This term refers to projects that have been fully completed by the prospective 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.

**“WITHIN THE UNITED STATES”**—For purposes of this subsection, the term ‘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 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 Commonwealths of Puerto Rico and the Northern Mariana Islands.

**“ADMINISTRATIVE AND TECHNICAL, PROFESSIONAL, OR CONSTRUCTION SERVICES”**—These terms refer to the kind of work in which the prospective offeror is interested. If the proposed contract is for construction management services, the prospective offeror will be expected to demonstrate construction management experience. 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”**—This term refers to the physical and technical size and demands of the project.

**“TYPE OF CONSTRUCTION”**—This term refers to 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 offeror will be expected to demonstrate experience with facilities of this type.

**“VALUE”**—This term refers to the total contract price of the project, not to the profit or loss to the contractor.

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

Location: \_\_\_\_\_ (city and state)  
Type of service: \_\_\_\_\_ (administrative, etc.)  
Complexity: \_\_\_\_\_ (office building, etc.)  
Type of construction: \_\_\_\_\_  
Value of project: \_\_\_\_\_

If the prospective 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 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:**

**"TOTAL BUSINESS VOLUME"**—This term means the dollar value of the gross income or receipts reported by the prospective offeror on its annual federal income tax returns.

**"YEARS"**—This term refers to the business year of the organization seeking pre-qualification, as reflected on that organization's federal income tax returns.

**"3 YEARS OF THE 5-YEAR PERIOD BEFORE THE DATE SPECIFIED IN SUBPARAGRAPH (C) (i)"**—This term refers to the 3 to 5-year period immediately preceding the issuance date of this proposal.

Question 5: Please fill out the information below for at least three (3) of the five (5) listed years.

The gross receipts of the organization seeking pre-qualification for its business year \_\_\_\_\_

The gross receipts of the organization seeking pre-qualification for its business year \_\_\_\_\_

The gross receipts of the organization seeking pre-qualification for its business year \_\_\_\_\_

The gross receipts of the organization seeking pre-qualification for its business year \_\_\_\_\_

The gross receipts of the organization seeking pre-qualification for its business year \_\_\_\_\_

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:**

**“UNITED STATES CITIZENS”**—This term refers only to natural persons with United States citizenship or nationality, whether acquired by birth or naturalization.

**“IN THE UNITED STATES”**—This term refers to those positions the prospective 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 or the Northern Mariana Islands.

**“PRINCIPAL MANAGEMENT POSITIONS”**—This term refers to the chief operating officer of the prospective offeror and those management people 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 a corporation’s Board 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 also includes the individual or individuals expected to have primary responsibility for the contract if it is awarded to the prospective offeror. Each prospective offeror is responsible for listing all of its principal management positions and identifying their current occupants by name and citizenship.

**“PERMANENT, FULL-TIME POSITIONS”**—The term “permanent” refers to jobs with the prospective offeror that are intended to be indefinite, as opposed to limited, season, 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 offeror’s workforce that continues to be employed without regard to the fluctuating requirements of production or projects.

**“SUPERVISORY POSITIONS”**—This term refers to 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.



financial resources, they 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.

NOTE: The material showing existing technical and financial resources in the United States must be attached at Tab B.

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:**

**“JOINT VENTURE”**—This term refers to 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 offerors are advised that a joint venture may not be acceptable for projects requiring a Defense Department facility security clearance because each co-venturer may pose particular problems in obtaining security clearances. (Additionally, the U.S. person co-venturer must agree that it is individually and severally liable for the full performance of and resolution of any and all respects of the contract and matters arising out of it, notwithstanding any provision of the joint venture agreement of law of the jurisdiction under which the joint venture has been created.)

**“ASSETS”**—This term refers to tangible and intangible assets conveyed to or made available for the joint venture by the co-venturers.

Question 7:

- (a) The prospective offeror [ ] is, [ ] is not, a joint venture.
- (b) If the prospective offeror is a joint venture, the U.S. person participant is:  
\_\_\_\_\_ (name)  
\_\_\_\_\_ (address)  
\_\_\_\_\_ (address)
- (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)
- (d) If the prospective offeror is a joint venture, the U.S. person participant will own at least 51 percent of the assets of the joint venture.  
I so certify: \_\_\_\_\_ (signature)  
\_\_\_\_\_ (name typed or printed)  
\_\_\_\_\_ (position)  
\_\_\_\_\_ (title)

9. Libya—introduction—Section 406(c) of the Omnibus Diplomatic and Antiterrorism Act of 1986 provides: “No person doing business with Libya may be eligible for any

contract awarded pursuant to this Act.” The following information is provided for the benefit of prospective offerors.

**Definitions:**

**“PERSON”**—This term means any individual or legal entity, whether U.S. or foreign. Subcontractors and others who do not have a direct contractual relationship with the United States are not covered by this section.

**“DOING BUSINESS”**—This term refers to all transactions of any kind agreed to or performed after the earlier of the date on which the pre-qualification request or other document is submitted to the Department of State or on which the contract, subcontract, program, or other arrangement with the Department of State or contractor is awarded or becomes effective. Any transaction commenced prior to the date of submittal or award and not yet completed must be reported. Transactions that call for continued or future performance will be disqualifying. Transactions that call for continued or future performance will be disqualifying. Transactions that have been completely performed but for which payment has not yet been made must be reported, but will not be disqualifying unless any event other than payment of a previously-agreed upon sum occurs. Examples of disqualifying transactions include any pending litigation arising out of business transactions with Libya, renegotiation of the terms of a loan, and refinancing an amount owed or owing.

**“WITH LIBYA”**—This term refers to transactions between any person and the Government of Libya, government entities of Libya, or any other organization wholly owned or effectively controlled by the Government of Libya. It is the responsibility of the entity submitting Section 406 information to disclose existing relationships with the entities that it has reasonable grounds to believe are or may be Libyan. In case of doubt or dispute, the Department of State shall determine, in its sole discretion, whether any organization is a governmental entity of Libya, wholly owned by the Government of Libya, or effectively controlled by the Government of Libya.

**“CONTRACT AWARDED”**—This term establishes a time frame for the bar on doing business with Libya. The time during which a relationship with Libya is prohibited begins on the date the Section 406 information is submitted. For entities not selected for award of contract, the prohibition ceases on the date of award. For the entity that is awarded the contract, the bar continues through the life of the contract, ending on the date of final acceptance of the work.

NOTE: CHECK APPLICABLE BOX

Based upon the foregoing, I hereby certify on behalf of this organization that it [ ] is [ ] is not doing business with Libya as those terms are used in Section 406 (c) of the “Omnibus Diplomatic Security and Antiterrorism Act of 1986.”

**SIGNATURE:** By signing this document the offeror indicates that to the best of his/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 Title 18 U.S.C. Section 1001 for making false statements.

Name of Company: \_\_\_\_\_

By:/s/ \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_