

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)

Offeror Shall:

- 1. Complete Certifications 1 through 8**
- 2. Provide documentation:**
 - Tab A, See Certification # 3, Required if Applicable**
 - Tab B, See Certification # 7, Required**
 - Question 4, If Necessary**
- 3. Sign completed Pamphlet at page 9 of 10**

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:

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

Introduction

Section 402 of the Omnibus Diplomatic and Antiterrorism Act of 1986 provides that a “United States person” must meet certain requirements, 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 entitled 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.

Certification # 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.

Certification # 2(a): The organization seeking pre-qualification has its principal place of business in _____ (city, state).

Certification # 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, 2002 through December 31, 2002 is one calendar year, as is July 1, 2003 through June 30, 2004.

“ISSUANCE DATE”—The Department expects that the issuance date of the Phase II solicitation will be in April – July 2008.

Certification # 3: The organization seeking pre-qualification was incorporated or legally organized on _____. **ATTACHMENT REQUIRED**

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, **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 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 **including a United States diplomatic or consular establishment abroad** 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 and **a United States diplomatic or consular establishment abroad.**

“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.

Certification # 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.

Certification # 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 2007 _____

The gross receipts of the organization seeking pre-qualification for its business year 2006 _____

The gross receipts of the organization seeking pre-qualification for its business year 2005 _____

The gross receipts of the organization seeking pre-qualification for its business year 2004 _____

The gross receipts of the organization seeking pre-qualification for its business year 2003 _____

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.

Certification 6(a): The organization seeking pre-qualification 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:

<u>Position</u>	<u>Name</u>	<u>Citizenship</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

_____ (name)
_____ (citizenship)

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

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

Certification 6(d): Certification of intent to employ U.S. citizens in a minimum of 80 percent of the supervisory positions identified by the Department of State 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:

“**TECHNICAL AND FINANCIAL RESOURCES**”—These terms refer to the capability of the prospective offeror to mobilize adequate staffing and monetary arrangements from within the United States sufficient to perform the contract. Demonstration of adequate staffing levels may be the resumes of current United States citizens and resident aliens with skills and expertise necessary for the work in which the prospective offeror is interested or some other indication of available United States

citizen or permanent legal resident human resources. Demonstration of adequate 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.

Certification # 7: The material showing existing technical and financial resources in the United States must be attached at **Tab B.** **ATTACHMENT REQUIRED**

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.

Certification # 8:

- (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)

Definitions:

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: _____