

(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/offeree 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 her or her entrepreneurial capacity will be deemed to be a "person legally organized" within the scope of this definition, provided that the prospective bidder/offeree 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/offeree. For purposes of this section, a prospective bidder/offeree 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/offeree 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/offeree must show that the law of the jurisdiction in which it operates regards the prospective bidder/offeree 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/offeree is interested. If the proposed contract is for construction management services, the prospective bidder/offeree 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/offeree 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/offeree 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/offeree.

*Within the United States* means a United States jurisdiction that is the place where the