

Department of State

652.236-71

(iii) Trenching or other excavation greater than one (1) meter in depth;

(iv) Earth moving equipment;

(v) Temporary wiring, use of portable electric tools, or other recognized electrical hazards. Temporary wiring and portable electric tools require the use of a ground fault circuit interrupter (GFCI) in the affected circuits; other electrical hazards may also require the use of a GFCI;

(vi) Work in confined spaces (limited exits, potential for oxygen less than 19.5 percent or combustible atmosphere, potential for solid or liquid engulfment, or other hazards considered to be immediately dangerous to life or health such as water tanks, transformer vaults, sewers, cisterns, etc.);

(vii) Hazardous materials—a material with a physical or health hazard including but not limited to, flammable, explosive, corrosive, toxic, reactive or unstable, or any operations which creates any kind of contamination inside an occupied building such as dust from demolition activities, paints, solvents, etc.; or

(viii) Hazardous noise levels.

(b) Records. The contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to or theft of property, materials, supplies, or equipment. The contractor shall report this data in the manner prescribed by the contracting officer.

(c) Subcontracts. The contractor shall be responsible for its subcontractors' compliance with this clause.

(d) Written program. Before commencing work, the contractor shall:

(1) Submit a written plan to the contracting officer for implementing this clause. The plan shall include specific management or technical procedures for effectively controlling hazards associated with the project; and,

(2) Meet with the contracting officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

(e) Notification. The contracting officer shall notify the contractor of any non-compliance with these requirements and the corrective actions required. This notice, when delivered to the contractor or the contractor's representative on site, shall be deemed sufficient notice of the non-compliance and corrective action required. After receiving the notice, the contractor shall immediately take corrective action. If the contractor fails or refuses to promptly take corrective action, the contracting officer may issue an order suspending all or part of the work until satisfactory corrective action has been taken. The contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance sched-

ule on any suspension of work order issued under this clause.

(End of clause)

[64 FR 43633, Aug. 11, 1999, as amended at 69 FR 19339, Apr. 13, 2004]

652.236-71 Foreign Service Buildings Act, as Amended.

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

FOREIGN SERVICE BUILDINGS ACT, AS AMENDED (APR 2004)

(a) This solicitation is subject to Section 11 of the Foreign Service Buildings Act of 1926, as amended (22 U.S.C. 302). This statute limits competition under this solicitation to:

(1) American-owned firms, as described in paragraph (b) of this provision; and,

(2) Firms from countries that permit or agree to permit substantially equal access to American firms for comparable diplomatic and consular building projects.

(b) To qualify as an American-owned firm for purposes of this solicitation, the bidder/offeror must demonstrate evidence of:

(1) Performance of similar construction work in the United States; and

(2) Either—  
(i) Ownership in excess of 50% by U.S. citizens or permanent residents; or

(ii) Incorporation in the United States for more than three (3) years and employment of U.S. citizens or permanent residents in more than half of the company's permanent full-time professional and managerial positions in the United States.

(c) For purposes of determining competitive status, offers submitted by American-owned firms shall be reduced by ten (10) percent, provided that two responsible bidders/offerors submit a bid/offer.

(d) Evidence of qualification. (1) Performance of similar construction work in the United States. The bidder/offeror must describe below one or more similar projects completed in the United States. For each project, provide the following information:

Location: \_\_\_\_\_  
(City and State) \_\_\_\_\_  
Complexity: \_\_\_\_\_

(Office building, etc.)  
Type of construction: \_\_\_\_\_  
Value of project: \_\_\_\_\_

Location: \_\_\_\_\_  
(City and State) \_\_\_\_\_  
Complexity: \_\_\_\_\_

(Office building, etc.)  
Type of construction: \_\_\_\_\_  
Value of project: \_\_\_\_\_  
Location: \_\_\_\_\_

(City and State) \_\_\_\_\_  
Complexity: \_\_\_\_\_

(Office building, etc.) \_\_\_\_\_  
Type of construction: \_\_\_\_\_  
Value of project: \_\_\_\_\_

If the bidder/offeree's participation was as a partner or co-venture, indicate the percentage of the project performed by the bidder/offeree: \_\_\_\_\_ %

(2) Corporate location or ownership.

(i) The bidder/offeree certifies that it  is  is not owned in excess of fifty (50) percent by United States citizens or permanent residents.

(ii) The bidder/offeree certifies that it  has  has not been incorporated in the United States for more than three years and that it  employs  does not employ United States citizens or permanent residents in more than half of its permanent full-time professional and managerial positions in the United States.

(e) By signing this bid/offer, the bidder/offeree certifies to the best of its knowledge, all of the representations and certifications provided in this provision are accurate, current and complete.

(End of provision)

[69 FR 19339, Apr. 13, 2004]

**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 (APR 2004)

(a) This solicitation is subject to Section 402 and Section 406(c) 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, and excludes organizations that have business arrangements with Libya. This Statement of Qualifications shall be used to determine if a bidder/offeree meets the definition of a "United States person" or a "United States joint venture person" and whether they have any business arrangements with Libya that may disqualify them from participating in this solicitation.

(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/offeree in response to this solicitation, to be qualified pursuant to Section 402.

(c) *Representation.* The bidder/offeree 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/offeree and reference for consideration of suspension or debarment or for prosecution under Federal law (cf. 18 U.S.C. 1001). Bidder/offeree 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/offeree'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/offeree 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/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