



USAID
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NextGen -- Summary of Organizational Conflicts of Interest

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1. Background

- a. Given the nature of the work, there are situations where a contractor's ability to render impartial advice to USAID could be impaired by holding multiple NextGen contracts.
- b. This is of specific concern with three NextGen contracts: Control Tower (CT); Qualifying Testing Issuing (QuTI); and Strategic Risk Management (SRM).
 - 1) CT: The contractor has a central role in collecting, distributing, and analyzing data received from the other NextGen contractors. The contractor is required to provide impartial advice to USAID and the other NextGen contractors. The CT contractor's ability to provide impartial advice would be compromised or impaired if the CT prime contractor were also the prime contractor of any other NextGen contract. For example, if the CT contractor was in the position of reviewing and analyzing data it generated under a separate NextGen contract, it could have a financial incentive to analyze the data in a way that more-favorably characterizes its contract performance under that contract.
 - 2) QuTI: The QuTI contractor will perform the central role of assuring the quality of commodities procured by the contractors for the PSA HIV, Integrated PSA, and PSA Diagnostics contracts (each a "PSA contract"). The QuTI contractor is required to provide impartial quality assurance services to USAID. There is a significant possibility that the QuTI contractor's ability to provide that impartial advice would be compromised or impaired if the QuTI contractor were also the prime contractor of any NextGen PSA contract. In that scenario, the QuTI contractor could have a financial interest in approving non-compliant commodities that it supplies under the PSA contract.
 - 3) SRM: The SRM contractor will have a central role in identifying and analyzing the strategic risks related to NextGen and advising USAID on mitigating those risks. The contractor's ability to provide that impartial advice and assistance could be compromised if the SRM prime contractor were also the prime contractor for any another NextGen contract, as its advice and recommendations will invariably involve the actions and policies of other NextGen contractors.

2. Scope of Preclusions

- a. PRIME CONTRACTORS -- The QuTI, CT, and SRM prime contractors will be ineligible to receive certain other NextGen contracts (and vice versa).
 - 1) *CT: All other NextGen contracts*
 - 2) *QuTI: All PSA contracts*
 - 3) *SRM: All other NextGen contracts*
 - i. **Example #1** - ABC Co. is awarded the CT contract and has submitted a proposal for the Comprehensive Technical Assistance (Comprehensive TA) contract. ABC Co. is no longer eligible to receive Comprehensive TA and USAID may not accept its proposal for Comprehensive TA.
 - ii. **Example #2** - ABC Co. is awarded a PSA contract and has submitted a proposal for QuTI. ABC Co. is no longer eligible to receive QuTI and USAID may not accept its proposal for QuTI.
- b. SUBCONTRACTORS -- The CT, QuTI, and SRM preclusions will “flow down” to subcontracts under those contracts, although the contracting officer could exempt specific subcontractors from the restriction. These preclusions will not “flow down” to subcontracts under the other NextGen contracts. This means:
 - 1) *The CT, QuTI, and SRM prime contractors are not precluded from performing subcontracts under the other NextGen awards,*
 - 2) *BUT, prime contractors for the other NextGen awards may be precluded from performing subcontracts under CT, QuTI, and SRM (this could be waived by the CO).*
 - 3) *Subcontractors are not precluded from being a subcontractor on another award.*
 - i. **Example #1** - ABC Co. is a subcontractor under the CT contract. ABC Co. is precluded from being awarded the Comprehensive TA contract, unless the CT CO grants an exception.
 - ii. **Example #2** - ABC Co. is a subcontractor under the Comprehensive TA contract. ABC Co. is not precluded from being awarded the CT contract.
 - iii. **Example #3** - ABC Co. is a PSA prime contractor. ABC Co. is precluded from receiving a subcontract under the QuTI contract, unless the QuTI CO grants an exception.
 - iv. **Example #4** - ABC Co. is a subcontractor under the CT contract. ABC Co. is not precluded from being a subcontractor under the Comprehensive TA contract.

- c. SUBSIDIARIES AND AFFILIATES -- The preclusions will apply to all subsidiaries and affiliates of the contractor.
- i. **Example #1** - ABC Co.'s subsidiary, XYZ LLC, is awarded the CT contract. ABC Co. is precluded from receiving the In-Country Logistics contract.
 - ii. **Example #2** - ABC Co.'s affiliated company, ABC Consulting, is a subcontractor under the QuTI contract. ABC Co. is precluded from receiving a PSA contract, unless the QuTI CO grants an exception.

3. Frequently Asked Questions

- a. *Why preclusion and not another form of mitigation?* Since the conflict applies to the contractor as a whole, the contractor is unlikely to be able to impose firewalls or other measures that would adequately mitigate this inherent conflict of interest.
- b. *Won't this limit competition?* Potentially. USAID sought to avoid such restrictions as much as possible to encourage competition. These preclusions are narrowly tailored to avoid the creation of unmitigatable organizational conflicts of interest (OCI). No other preclusions are proposed at this time.
- c. *How will USAID apply the preclusions?* Preclusion language will be included in the solicitations and contracts for the CT, QuTI, and SRM contracts, with corresponding provisions in the other NextGen solicitations and contracts. The CT, QuTI, and SRM prime contractors will need to include these provisions in subcontracts, unless the CO grants an exception.
- d. *Why are CT, QuTI, and SRM subcontractors being treated differently from subcontractors under the other contracts?* In light of the heightened OCI concerns associated with CT, QuTI, and SRM, USAID will require that the prime contractors for these contracts incorporate the preclusion in all subcontracts, unless an exception is granted by the cognizant CO. Similar restrictions will not apply to subcontractors under other NextGen awards, which will help maintain the pool of potential competitors for the CT, QuTI, and SRM contracts.
- e. *Under what circumstances could the CT, QuTI, and SRM CO exempt a subcontractor from the preclusion provisions?* The CT, QuTI or SRM prime contractor will be expected to demonstrate that the work performed by the specific subcontractor is not likely to create a conflict of interest if the subcontractor is also the prime contractor for another NextGen contract. For example, a subcontractor that provides commercial software under the QuTI contract, but is not otherwise involved in assessing the quality of commodities provided under a PSA contract, might be exempted from the preclusion. This determination will be made on a case-by-case basis.

- f. *Even with these preclusions, couldn't there still be an OCI issue?* Yes. USAID contracting officers will continue to analyze NextGen procurements as necessary to avoid, neutralize, or mitigate OCIs consistent with the Federal Acquisition Regulation (FAR).
- g. *Are offerors able to submit proposals in response to multiple NextGen solicitations, even if they would be precluded from receiving certain contracts?* Yes. There is no restriction on the submission of proposals. If an offeror receives a NextGen contract, however, it may be precluded at that point from receiving certain other contracts.
- h. *Which NextGen contract will be awarded first?* USAID's intent is to award the CT contract before other awards, although exact timing has not been determined. The sequence for USAID to award the remaining contracts remains to be determined.

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