Integrated Procurement Service Agent (PSA) Indefinite-Delivery/Indefinite-Quantity (IDIQ) within the Next Generation Global Health Supply Chain Suite of Programs (NextGen)– 7200AA22R00011

Unlock Aid reviewed the NextGen Integrated Procurement Service Agent (PSA) Indefinite-Delivery/Indefinite-Quantity RFP released on March 14, 2022.

This is a single-sourced IDIQ with an overall ceiling price of $4.1 billion. The contractor that wins this award will be responsible for fulfilling multiple USAID-issued task orders (TOs) related to the procurement and delivery of health commodities for the U.S. President's Malaria Initiative (PMI), as well as USAID's other malaria programs, its global health security program, family planning and reproductive health program, and maternal and child health program. According to RFP language, some TOs will be issued using Firm-Fixed Price (FFP) contracts, while others will be structured using mechanisms including Cost-Plus-Award-Free (CPAF), Cost-Plus-Incentive-Fee (CPIF), Cost-Plus-Fixed-Fee (CPFF). Generally speaking, only legacy agency contractors can compete and/or participate in awards and TOs that are structured using any variation of cost-plus models since the systems investments and regulatory burdens to comply with these award types are so significant. This RFP is 204 pages.

Unlock Aid evaluated the NextGen PSA IDIQ to see how well the RFP design: a) incentivizes contractors to deliver results; b) promotes innovation by sourcing new ideas and approaches from innovators; and c) encourages transparency.

Here's what we liked:

- The RFP requires the contractor to submit quarterly reports indicating progress towards achieving specific Key Performance Indicators, including on-time delivery and commodity cost savings, among others. While we would like to see more KPIs that relate to improved outcomes (i.e. reduced maternal mortality, reduced malaria incidence, etc.), as well as indicators that measure overall cost-effectiveness for each activity/intervention performed, we are nonetheless encouraged that this award has a strong focus on using quantifiable metrics to evaluate progress. USAID could strengthen these reporting requirements by stating in the RFP that the agency will make these quarterly reports publicly available within 30 days after the agency receives them (see recommendation three below).

- The RFP includes FAR cause 52.244-6 Subcontracts for Commercial Products and Commercial Services which specifies, "to the maximum extent possible, require its subcontractors at all tiers to incorporate commercial products, commercial services, or non-developmental items as components to be supplied under this contract." This clause is important because many best-in-class innovators specialize in providing one specific product and/or service, many of these products and/or services are available off-the-shelf and can be immediately deployed or deployed with only minimal modifications, and they tend to be cheaper, superior to, and generally more cost-effective than an equivalent product or service that would need to be created from scratch. By executing component-specific TOs – rather than asking subcontractors to perform a variety of functions that go well outside their areas of specialty – this can expand the number of subcontractors that could potentially participate in the overall award, especially if TOs for specific components are issued as FFP contracts, which are easier for non-legacy contractors to manage.

Here's what could use improvement:

1. Since USAID will issue multiple task orders (TOs) under this IDIQ, the RFP should indicate the majority of those TOs will be structured using FFP mechanisms. Doing so would crowd-in more interest from new, non-legacy government contractors to participate. We are concerned that the default TO vehicle-type for this IDIQ will become cost-reimbursable ones such as CPAF, CPIF, or CPFF since the only two TOs included in this RFP so far are structured as a CPAF and a CPIF. This crowds-out opportunities for new organizations that have never worked with USAID before to play a role:

    - Mechanisms like CPAF, CPIF, and CPFF reimburse contractors for costs incurred. The CPAF and CPIF mechanisms provide additional "award" or "incentive" payments to encourage good performance, which makes them preferable to other cost-reimbursable methods such as the CPFF that does not include any financial incentives for good performance. However, the "cost" component of the CPFF, CPAF, and CPIF is problematic. The moment USAID uses any element of "cost-reimbursable" methods to pay a contractor, the compliance requirements skyrocket, which discourages and often makes it impossible for new, non-legacy contractors to participate. Due to FAR requirements, to calculate costs as part of a "cost-reimbursable" award, such as reimbursable hourly rates, USAID requires the bidding contractor to submit arcane documentation like a Negotiated Indirect Cost Rate Agreement (NICRA), or multiple years of audited financials, or other equivalent documentation. These are exceedingly expensive, complex, and time-consuming to obtain; legacy government contractors will have these documents but organizations that have not worked with the government before will not.

    - FFPs, on the other hand, are among the best tools that USAID has to incentivize efficient and economical performance, minimize the administrative burden for USAID and the implementer, and are easier for organizations that have never worked with USAID before to apply for and manage. Under an FFP contract or subcontract, USAID pays only against the delivery of milestones and does not reimburse for costs. Since cost calculations are immaterial to final payment, USAID therefore does not need scrutinize, approve, and/or audit incurred costs or oversee NICRAs and/or audited financials when it structures contracts using the FFP model. The contractor also does not need to invest in expensive systems to track expenses in a manner that is compliant with USAID cost-reimbursable requirements.

    - One criticism of the FFP award type is that it puts more risk on the contractor, which may discourage new and/or smaller organizations from bidding. There are ways to address these concerns, however: USAID could provide up-front payment at the project's start date to provide the contractor with the financial runway needed to get started, with subsequent, staged payments subject to delivery of milestones to incentivize good performance and allows adaptation as needs change. The contractor could also embed a risk premium in the price quote it provides to USAID. *Force majeure* clauses can also protect both USAID and the contractor in the event unforeseen circumstances make project delivery impossible. In fact, contrary to this criticism of the FFP award type, the compliance burdens associated with cost-reimbursable models tend to discourage new partners from working with USAID and other US Government agencies *more than* any perceived risk from an FFP payment model since the FFP model is standard in the private sector. Many innovators and local partners *actively seek out* FFP awards because they are so much easier to apply for and manage than their cost-reimbursable alternatives.

2. While the RFP states that USAID may issue future TOs as FFP contracts (which is good, in theory), the RFP language takes the additional, unnecessary step of requiring contractors to submit audited financials anyway. USAID can easily resolve this by including FAR reference "FAR Part 52.212-4 Contract Terms and Conditions – Commercial Items" for subcontract awards to remove the Audit and Records Negotiations requirement for proposed subcontractors. If USAID does not include this reference, this RFP will needlessly introduce the regulatory and compliance headaches that are associated with cost-reimbursable awards but are not needed for FFPs. Asking for audited financials or other associated costing documents like a NICRA is akin to agreeing to pay a fixed price for a new house and then asking the builder to account for how many hammers and nails it has historically purchased and for how much.

3. The RFP requires the winning prime contractor to submit quarterly reports regarding progress made towards achieving Key Performance Indicators such as on-time delivery. USAID should go one step further in this RFP and indicate that the agency will <u>publish, within 30 days of receipt from the contractor,</u> the KPI quarterly progress reports *and* the high-level activities that the winning prime contractor proposes to perform in the IDIQ work plans, along with information about progress made towards achieving those goals. **The agency should also require the winning prime contractor to report the percentage of total funding it proposed to USAID it would devolve to sub-partners for each TO and IDIQ-level activity side-by-side with percent of funding actually devolved**. These reports should also be made publicly available every quarter.

    - Note: Many local partners and innovators expend enormous business development resources just to get on a single winning prime contractor's proposal but often later see just a fraction of the funding that was promised during the proposal stage actually devolved to the sub-contractor, if the prime contractor devolves any funding at all. These high costs of doing business – often for little or no financial return – discourage many organizations from wanting to work on large USAID awards managed by bigger contractors. Adding more transparency to the process – starting with the award proposal phase through activity execution – would add a layer of protection for sub-contractors and encourage more organizations to work with USAID.

4. Finally, the RFP incorporates FAR clause 52.215-22, which limits how much of the total award the prime contractor can pass-through to sub-contractors to no more than 70 percent of the total award value. The agency should remove this clause from the RFP. We suspect USAID included this clause to reduce overall management complexity, both to USAID and the prime contractor. However, this unnecessarily limits the ability of the winning prime contractor to work with local partners, more innovative organizations, and/or purchase life-saving health commodities that may exceed 70 percent of the total award value in aggregate.

    - In addition to removing this reference, USAID should take a step in the opposite direction and require the prime contractor to allocate a minimum percentage of the total award value for new and/or underutilized partners that have done less than $25 million with USAID over the past five years to crowd-in more innovation from organizations that have not historically worked with the government before. Targeting five percent is a good place to start, and by embedding clauses like this in this award (and future awards) the agency can immediately begin to source new and more innovative organizations to work with USAID.

We have provided more detailed recommendations regarding the RFP design below:

Appendix: Detailed Comments Regarding Underlying RFP

Agency:	US Agency for International Department (USAID) - Bureau for Global Health
Solicitation No:	7200AA22R00011
Solicitation Name:	Integrated Procurement Service Agent (PSA) Indefinite-Delivery/Indefinite-Quantity (IDIQ) within the Next Generation Global Health Supply Chain Suite of Programs (NextGen)

Solicitation Reference	Recommended Reference	Concern	Recommendation

B.2 Contract Type and Services – Cost Reimbursable	Cost-Plus-Award-Fee (CPAF), Cost-Plus-Incentive-Fee (CPIF) and Cost-Plus-Fixed-Fee (CPFF)	• To be a prime contractor on this award, the contractor must follow FAR 16.3 Cost Reimbursable Contracts which requires the use of 52.216-7 Allowable Cost and Payment
		• The first two Task Orders are Cost Plus Award Fee (CPAF), which limits who can participate on the award.
		• While the RFP includes "FAR Part 52.244-6 Subcontracts for Commercial Products and Commercial Services" which encourages USAID to source commercial solutions to solve problems, including to pay those contractors using FFP mechanisms, the RFP does not include "FAR Part 52.212-4 Contract Terms and Conditions – Commercial Items," so the RFP needlessly imposes many of the regulatory burdens associated with cost-reimbursable award vehicles.
			• USAID should structure as many of the TOs under this award as FFPs, not CPAFs, CPIFs, or CPFFs.
			• This RFP should reference "FAR Part 52.212-4 Contract Terms and Conditions – Commercial Items" for subcontract awards to remove the Audit and Records Negotiations requirement for proposed subcontractors, especially for those TOs that will be issued as FFPs.
			• If the agency insists on using cost reimbursable methods, USAID should at a minimum:
			  ○ Allow the prime and/or sub to perform a price analysis of the commercial T&M Rates with a reasonable price comparison with prior purchases of the same or similar supplies or services made on a competitive basis in lieu of Audit and Negotiations requirements.
			  ○ Allow a T&M contract or labor-hour contract. Per FAR 12.207 Contract type subparagraph (b), a T&M contract or labor-hour contract "may be used for the acquisition of commercial services when-
			(i) The service is acquired under a contract awarded using-

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			▪ (A) Competitive procedures (e.g., the procedures in 6.102, the set-aside procedures in subpart 19.5, or competition conducted in accordance with part 13); ▪ (B) The procedures for other than full and open competition in 6.3 provided the agency receives offers that satisfy the Government's expressed requirement from two or more responsible offerors;" • The Scope of Work may fit the T&M requirements by allowing a small organization to perform a scope of work on this project. There would still be a significant burden for a smaller partner related to tracking of Level of Effort but this T&M structure would still allow the smaller partner to avoid the costly and onerous task to apply for the award per FAR Part 52.215-2 Audit and Records Negotiations.
B.2 Contract Type and Services – Firm Fixed Price	52.212-4 Contract Terms and Conditions – Commercial Items	• RFP B.10 Cost Reimbursable clearly states that 52.216-7 Allowable Cost and Payment is only applicable to Cost Type Task Orders but Section L.8.3 Part 2 – Proposed IDIQ Rates, Task Order Budgets and Narratives does not differentiate requirements for Cost Reimbursable vs. Firm Fixed Price. • While the RFP includes "FAR Part 52.244-6 Subcontracts for Commercial Products and Commercial Services" the RFP does not include "FAR Part 52.212-4 Contract Terms and	• This RFP should reference "FAR Part 52.212-4 Contract Terms and Conditions – Commercial Items" for subcontract awards to remove the Audit and Records Negotiations requirement for proposed subcontractors. • In fact, FAR 16.301-3 prohibits the use of cost-reimbursement contracts for the acquisition of commercial products and services (i.e., products or services that are the same as those a contractor sells in the commercial marketplace), so the agency should not impose requirements on cost-

Solicitation Reference	Recommended Reference	Concern	Recommendation
		Conditions – Commercial Items Per FAR 16.202-2 Application, "An FFP is suitable for acquiring commercial products or commercial services (see parts 2 and 12 of FAR 16.202-2) or for acquiring other supplies or services on the basis of reasonably definite functional or detailed specifications (see FAR 16.202-2 part 11) when the contracting officer can establish fair and reasonable prices at the outset, such as when: ○ (a) There is adequate price competition; ○ (b) There are reasonable price comparisons with prior purchases of the same or similar supplies or services made on a competitive basis or supported by valid certified cost or pricing data ; ○ (c) Available cost or pricing information permits realistic estimates of the probable costs of performance; or ○ (d) Performance uncertainties can be identified and reasonable estimates of their cost impact can be made, and the contractor is willing to accept a firm fixed price representing assumption of the risks involved." • As this is a competitive proposal using Full and Open method, there would be	reimbursement awards to those that use FFP. • If USAID determines it still must see cost information, in lieu of requiring a subcontractor to Audit Negotiations, the subcontractor should be able to provide evidence of other contracts or similar documentation to show they been awarded for similar or the same scope providing price comparisons per subparagraph **(b).**

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		sufficient competition as required in subparagraph (a). • If the Prime can provide scope of work that is clearly defined [per subparagraph (d)] and readily available in the market, this would allow the Prime to perform a price analysis.	
52.215-22 Limitations on Pass-Through Charges – Identification of Subcontract Effort	None – remove reference	• The RFP references FAR clause 52.215-22, which limits how much of the total funding can be used for pass-through to sub-contractors to no more than 70 percent of the total award value. This clause unnecessarily limits how much the winning prime contractor can work with local partners, more innovative organizations, and/or how much of the total contract can be used to purchase life-saving health commodities.	• Remove this reference. It is not required by statute and creates unnecessary limits to the level that a prime contractor can work with local organizations and/or more innovative partners.
52.204-14 Service Contract Reporting Requirements and 52.204-15 Service Contract Reporting Requirements for Indefinite-Delivery Contracts	52.212-4 Contract Terms and Conditions – Commercial Items	• Requires reporting of direct labor hours expended on the services performed during the previous Government fiscal year which maybe difficult for a commercial service that is Firm Fixed Price. • While commercial items may be exempt from this requirement per the FAR, an agency contracting officer and/or prime contractor may adopt an overly risk-averse interpretation and insist that smaller partners submit said documentation.	• To remove any ambiguity, the RFP should include "FAR Part 52.212-4 Contract Terms and Conditions – Commercial Items" for subcontract awards to remove the requirement for proposed subcontractors.