

Decision

Matter of: Castro & Company, LLC

File: B-419366

Date: January 25, 2021

Wayne Ference for the protester.

Jason A. Carey, Esq., J. Hunter Bennett, Esq., Andrew Guy, Esq., and Darby Rourick, Esq., Covington & Burling, LLP, for Kearney & Company, P.C., the intervenor.

Justin M. Wakefield, Esq., Kelly Zeng, Esq., and Richard L. Hatfield, Esq., Department of Treasury, for the agency.

John Sorrenti, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's establishment of a noncompetitive logical follow-on blanket purchase agreement for compliance support services was reasonable pursuant to the authority of Federal Acquisition Regulation (FAR) section 8.405-6(a)(1)(i)(C).
 2. Where record shows that agency reasonably established a noncompetitive blanket purchase agreement under FAR section 8.405-6(a)(1)(i)(C), protester is not an interested party to further challenge the establishment of that agreement.
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DECISION

Castro & Company, LLC, of Alexandria, Virginia, protests the decision by the Department of Treasury, Internal Revenue Service (IRS) to establish a blanket purchase agreement (BPA) with Kearney & Company, P.C., also of Alexandria, Virginia, under request for quotations (RFQ) No. 2032H320Q00044, issued for compliance support services. Castro protests the agency's limited-sources justification and establishment of the BPA, made as a logical follow-on to a previously established BPA.

We deny the protest in part and dismiss it in part.

BACKGROUND

In 2010, Deepwater Horizon, an oil rig drilling in the Gulf of Mexico, exploded and spilled oil into tens of thousands of square miles of ocean. Agency Report (AR), Tab D.1, Acquisition Plan at 1. In response to the oil spill, in 2012 the Gulf RESTORE

Act was enacted to restore and protect the environment and economy in five Gulf Coast states. *Id.*; 33 U.S.C. § 1321(t). The Act created the Gulf Coast Restoration Trust Fund, into which 80 percent of the administrative and civil penalties paid in connection with the oil spill are deposited. *See id.* Expenditures from the trust fund are made through grants that the Department of Treasury administers. AR, Tab D.1, Acquisition Plan at 2. A unit within the Department of Treasury, Treasury RESTORE Act Compliance (TRAC), is responsible for monitoring grant recipients' compliance with the requirements of the RESTORE Act and other applicable laws and regulations. *Id.* Accordingly, the agency has obtained services from a contractor "to provide program compliance support services, specifically in the areas of developing, implementing and executing a robust compliance-management regime in accordance with applicable laws, regulations, legal agreements, and business documents." AR, Tab G.3, 2017 BPA Performance Work Statement (PWS) at 3.

In March 2017, pursuant to competitive procedures, the agency established a BPA with Kearney for these compliance support services.¹ COS at 2. The scope of work for the 2017 BPA required Kearney to perform three tasks: compliance reviews, annual due diligence reviews, and special projects. AR, Tab G.3, 2017 BPA PWS at 3. For the compliance reviews, estimated to be 75 percent of the effort, Kearney had to coordinate with the agency to "plan, prepare, conduct and report on desk and onsite compliance reviews of performance, internal controls, financial management, and compliance with applicable laws, regulations and grant terms and conditions for identified grant recipients." *Id.* For the annual due diligence reviews, estimated to be 20 percent of the effort, Kearney coordinated with the agency to "plan, prepare and conduct and report annual due diligence of eligible applicants." *Id.* For special projects, estimated to be 5 percent of the effort, Kearney executed a variety of special projects, including preparation of new procedures and guidelines; planning, preparing, and reporting or conducting training; and performing research and analysis on emerging issues. *Id.*

In May 2020, the agency conducted market research to determine how to procure these same compliance support services after Kearney's BPA ended in September 2020. *See* AR, Tab D.2, Market Research at 1, 3. As part of its research, the agency reviewed the prior acquisition history for similar requirements and contacted knowledgeable individuals in government and industry. *Id.* at 1. The agency also examined the General Services Administration's Federal Supply Schedules for qualified firms that could perform the work. *Id.* The agency reviewed price rates for 10 firms, including Castro, and found that Kearney's rates were "below the average and represented the lowest [s]enior [m]anager and [m]anager rates."² *Id.* at 2. The agency concluded that this acquisition would be awarded to Kearney as a sole source in accordance with FAR section 8.405-6(a)(1)(i)(C). *Id.* at 3.

¹ Castro had been providing the compliance support services pursuant to a contract awarded in August 2014. Contracting Officer's Statement (COS) at 2.

² The RFQ identified the two main labor categories required for this effort as principal or senior manager. RFQ, attach. 2, Price Submission Worksheet.

After conducting the market research, the agency drafted an acquisition plan which also stated that the acquisition would be pursued as a logical follow-on to the current BPA being performed by Kearney. AR, Tab D.1, Acquisition Plan at 2. The acquisition plan noted that Kearney “has consistently provided well-qualified and experienced contractor resources in the delivery of compliance services,” and that the agency and Kearney have “developed and implemented a robust and multifaceted compliance regime[.]” *Id.* at 3. Furthermore, the acquisition plan stated that engaging a firm other than Kearney “would involve significant TRAC resources dedicated to getting another firm up-to-speed on TRAC’s extensive processes and procedures.” *Id.* The acquisition plan also explained that the scope of work for the new acquisition was similar to the current compliance work being performed by Kearney. *Id.*

Consistent with the conclusions from the market research and acquisition plan, the agency executed a limited-sources justification (LSJ) for the noncompetitive acquisition of compliance support services as a logical follow-on to Kearney’s 2017 BPA. AR, Tab D.3, LSJ at 1. The LSJ was issued pursuant to FAR section 8.405-6(a)(1)(i)(C), which states:

In the interest of economy and efficiency, the new work is a logical follow-on to an original Federal Supply Schedule order provided that the original order was placed in accordance with applicable Federal Supply Schedule ordering procedures. The original order or BPA must not have been previously issued under sole-source or limited-sources procedures.

FAR 8.405-6(a)(1)(i)(C). The LSJ reiterated the concerns expressed in the acquisition plan, stating that “[e]ngaging another vendor would require substantial efforts to orient that vendor’s personnel causing schedule and cost risk to this labor-hour effort.” AR, Tab D.3, LSJ at 2.

The LSJ also explained that the work is “based on a compliance regime that was co-developed by TRAC management and staff in coordination with the contractor and is unique to Treasury’s RESTORE Act program and regulatory requirements.” *Id.* The LSJ stated that the annual risk assessment of RESTORE entities “is unique and has been enhanced and largely executed by [Kearney] over the past several years” and that the compliance program is complex and involves tools, techniques, and processes developed by TRAC and Kearney. *Id.* The LSJ further noted that Kearney’s institutional knowledge was “invaluable” and that Kearney has retained the same core team throughout performance of the 2017 BPA. *Id.*

In July 2020, the agency issued to Kearney an RFQ that included a PWS describing the scope of services. In particular, the PWS required Kearney to continue performing the same three tasks it had been performing under its 2017 BPA: compliance reviews, annual due diligence reviews, and special projects. AR, Tab E.2, 2020 BPA PWS at 3. The description of the expected work for all three tasks was essentially the same as the 2017 BPA PWS. *Compare* AR, Tab E.2, 2020 BPA PWS at 3 *with* AR, Tab G.3, 2017 BPA PWS at 3. The estimated effort for each task changed for the 2020 BPA PWS,

with compliance reviews comprising an estimated 60 percent of the effort, and annual due diligence reviews and special projects each comprising 20 percent. *Id.*

On August 6, 2020, Kearney submitted its quotation and on September 30, the agency established the follow-on BPA with Kearney.³ This protest followed.

DISCUSSION

Castro challenges various aspects of the agency's establishment of the BPA with Kearney, but generally alleges that the agency has not supported its decision to establish the sole-source follow-on BPA. In particular, Castro argues that the work is not so specialized or proprietary that the agency was justified in establishing a noncompetitive BPA for reasons of economy and efficiency.⁴

We will review an agency's use of an LSJ under FAR subpart 8.4 for reasonableness. See, e.g., *Federal Working Group*, B-416464, B-416464.2, Sept. 19, 2018, 2018 CPD ¶ 324 at 4; *XTec, Inc.*, B-405505, Nov. 8, 2011, 2011 CPD ¶ 249 at 3; *STG, Inc.*, B-405082, B-405082.2, July 27, 2011, 2011 CPD ¶ 155 at 3; *Systems Integration & Mgmt., Inc.*, B-402785.2, Aug. 10, 2010, 2010 CPD ¶ 207 at 2-3. As discussed below, we find nothing unreasonable in the agency's determination that award of a logical follow-on BPA to Kearney for ongoing RESTORE Act compliance services was justified.

As explained above, the 2017 BPA was established with Kearney under competitive procedures and required Kearney to perform three specific tasks related to compliance services. The 2020 BPA established with Kearney requires continued performance of the same three tasks. For example, under the 2017 BPA, Kearney had to perform compliance reviews, which involved planning, preparing, conducting, and reporting on desk and onsite compliance reviews. AR, Tab G.3, 2017 BPA PWS at 3. The follow-on BPA requires Kearney to continue to perform the exact same tasks with respect to the compliance reviews. AR, Tab E.2, 2020 BPA PWS at 3.

As another example, under the 2017 BPA, Kearney performed special projects, including preparation of new procedures, guidelines, tools and manuals; and planning, preparing, and reporting or conducting training for grant recipients. AR, Tab G.3, 2017 BPA PWS at 3. The 2020 BPA requires Kearney to update those guidelines, tools, and manuals, as well as to continue to prepare reports or conduct training for grant recipients. AR, Tab E.2, 2020 BPA PWS at 3. Thus, the work to be performed by

³ The BPA was for a 1-year base period, with two 1-year option periods, with a total estimated cost of \$4,500,000. AR, Tab F.1, 2020 BPA at 3, 5.

⁴ Castro also argued that the agency's market research did not support the establishment of a noncompetitive BPA with Kearney. Protest at 6-7. The agency provided a detailed response to this allegation, but the protester did not respond to the agency's position; we therefore find that Castro has abandoned this argument. *The Green Tech. Group, LLC*, B-417368, B-417368.2, June 14, 2019, 2019 CPD ¶ 219 at 8.

Kearney on the 2020 BPA is significantly similar, and a logical follow-on, to the work Kearney performed on the 2017 BPA. Moreover, the agency has explained that the 2020 BPA work involves the continued use of certain tools and techniques that were developed and enhanced by both the agency and Kearney.

Based on our review of the record, we find reasonable the agency's determination that, in the interest of economy and efficiency, the agency could establish the noncompetitive 2020 BPA with Kearney as a logical follow-on to the work performed on the 2017 BPA.

In addition to alleging that the agency failed to support its decision to establish the sole-source BPA with Kearney, Castro raises a number of additional arguments, including that the agency improperly limited competition by refusing to provide the RFQ to Castro, that the public version of the LSJ was so heavily redacted that it prevented meaningful review, that the agency failed to publish the LSJ within 14 days of establishing the BPA with Kearney as required by the FAR, and that the award to Kearney did not provide an economic benefit or best value to the agency because Castro had previously performed, and was capable of still performing, the compliance support services work.

Because we have concluded that the agency reasonably exercised the authority granted to it under FAR section 8.405-6(a)(1)(i)(C) to noncompetitively establish a logical follow-on BPA with Kearney, Castro is not an interested party to further challenge the agency's decision. In order to qualify as an interested party to protest a contract award, the protester must be an actual or prospective offeror whose direct economic interest would be affected. 4 C.F.R. § 21.0(a)(1). Based on our finding that the agency reasonably established the BPA with Kearney, Castro is not in line for award and therefore does not have a sufficient economic interest to challenge the agency's actions. Accordingly, Castro's other allegations are dismissed. See *Federal Working Group, supra* at 6.

The protest is denied in part and dismissed in part.

Thomas H. Armstrong
General Counsel