



**DOCUMENT FOR PUBLIC RELEASE**

The decision issued on the date below was subject to a GAO Protective Order. The entire decision has been approved for public release.

# Decision

**Matter of:** United Salad Company

**File:** B-422146

**Date:** January 18, 2024

---

D. Brent Carpenter, Esq., Jordan Ramis, PC, for the protester.  
Kenneth A. Martin, Esq., The Martin Law Firm, PLLC, for Chico Produce, Inc., the intervenor.  
Demetrius Pavlo, Esq., Department of Defense, for the agency.  
April Y. Shields, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

## DIGEST

1. Protest alleging that award was improper is denied where the awardee's proposal did not, on its face, indicate that the awardee would not comply with the solicitation's requirements; and where the record shows that the awardee's identity is sufficiently clear to contractually bind the firm.
  2. Protest alleging that the agency failed to perform a price realism evaluation is dismissed where the solicitation neither required nor permitted the agency to perform a price realism evaluation.
- 

## DECISION

United Salad Company of Portland, Oregon, protests the award of a contract to Chico Produce, Inc., doing business as (DBA) Pro Pacific Fresh, of Durham, California, under request for proposals (RFP) No. SPE300-22-R-0029, issued by the Department of Defense, Defense Logistics Agency, for the supply and delivery of fresh fruits and vegetables. United Salad challenges various aspects of the agency's evaluation and award decision.

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

## BACKGROUND

On September 19, 2022, the agency issued the RFP on an unrestricted basis, seeking a contractor to supply fresh fruits and vegetables, as well as shell eggs if required, to

customers in Oregon and parts of Washington. Agency Report (AR), Tab 1, RFP at 7. The RFP provided that the contractor would be required to “source, purchase, store, and deliver” a variety of fresh fruits and vegetables on an ongoing basis, “while at the same time maintaining acceptable fill rates, levels of customer service, and product quality.” *Id.* The RFP contemplated the award of an indefinite-quantity, fixed-price with economic price adjustment contract<sup>1</sup> to be performed over 48 months. *Id.* at 7-8.

The RFP stated that award would be made on a lowest-price, technically acceptable basis. *Id.* at 45-46. The RFP provided that a technically acceptable offer would be one that “takes no exceptions to the terms and conditions in the solicitation and complies fully with all submission requirements.” *Id.* at 46. The RFP further provided that, “[b]y submitting a proposal with no exceptions, an offeror is confirming it possesses the necessary facilities, equipment, technical skills and capacity to successfully provide all items required by this solicitation.” *Id.* Among other things, the RFP required offerors to provide a commercial and government entity (CAGE) code. *Id.* at 3. Of relevance here, the RFP also limited subcontracting as follows:

[A]n offeror must currently possess the physical, logistical, and financial resources to serve as a commercial distributor of a variety of [fresh fruits and vegetables] items. It is neither sufficient nor acceptable for an offeror to be a third-party logistics (“3PL”) company (*i.e.*, a company that does not intend to serve as the [fresh fruits and vegetables] supplier but instead intends to subcontract out the majority of aspects required by the contract, including but not limited to ordering, warehousing, distribution, etc.). By offering, an offeror affirms its status as a current and functioning commercial distributor of [fresh fruits and vegetables] items.

*Id.* at 7. In this regard, the RFP provided that, “[i]n order to determine whether an offeror meets the technical requirement of being a current and functioning commercial [fresh fruits and vegetables] distributor,” offerors were required to submit two pieces of information: (1) a valid and current Perishable Agricultural Commodities Act (PACA) license; and (2) a valid and current audit report with a passing score for each place of performance identified in the proposal.<sup>2</sup> *Id.* at 7, 46.

---

<sup>1</sup> The RFP’s requirements were divided into two groups--with group 1 servicing customers in Western Oregon and parts of Washington, and group 2 servicing customers in Eastern Oregon--and invited offerors to submit proposals for either or both groups. While the RFP permitted the agency to award a separate contract for each group, it also provided that the agency could award a single combined contract, in the event that one offeror was selected as the awardee for both groups. *Id.* at 7, 40; Contracting Officer’s Statement and Memorandum of Law (COS/MOL) at 2.

<sup>2</sup> By way of background, the audit report could be from the U.S. Department of Agriculture’s (USDA) Good Agricultural Practices and Good Manufacturing Practices (GAP/GMP) or from a recognized private independent third-party certifying company. *Id.* at 46. If an offeror submitted the latter, the RFP further provided that the offeror

(continued...)

For price, the RFP provided that the agency would perform “an aggregate price analysis” to determine the lowest evaluated aggregate price. *Id.* at 46. The RFP further provided that, for the presumptive awardee, the agency would evaluate prices “on an individual line-item basis to determine whether each price is fair and reasonable using analytical techniques deemed appropriate by the Contracting Officer in her/his complete discretion.” *Id.*

On or before October 20, 2022, the agency received proposals from two offerors: United Salad, a large business; and Chico Produce, a small business. The agency established a competitive range that included both offerors and conducted two rounds of negotiations. The agency evaluated both proposals as technically acceptable. The agency conducted a price analysis, determined that Chico Produce’s price was the lowest,<sup>3</sup> and evaluated Chico Produce’s price as fair and reasonable. *See id.*

On September 29, 2023, the agency awarded the contract to Chico Produce with a minimum value of \$565,755 and a maximum value of \$67,650,600. AR, Tab 6, Contract at 3. United Salad was subsequently notified of the agency’s award decision. After a debriefing, this protest followed.

## DISCUSSION

United Salad primarily raises three challenges. First, the protester alleges that the awardee’s proposal took exception to the terms of the RFP and, therefore, should have been rejected as technically unacceptable. Second, the protester alleges that the awardee’s identity is ambiguous and that the agency should have rejected its proposal as technically unacceptable on this basis, as well. Third, the protester alleges that the agency failed to reject the awardee’s prices as unrealistically low. While we do not specifically address all of United Salad’s arguments, we have fully considered all of them and find that they afford no basis on which to sustain the protest.

### Technical Acceptability

First, the protester alleges that the awardee intends to perform as a 3PL company in violation of the terms of the RFP and that its proposal therefore should have been

---

“must agree to have a USDA GAP/GMP audit report/certificate for each place of performance by the start of contract performance.” *Id.*

<sup>3</sup> Both offerors submitted proposals for both groups under the RFP, and the agency found Chico Produce’s price to be the lowest for each group. For group 1, United Salad’s total evaluated aggregate price was \$34,758,958, and Chico Produce’s total evaluated aggregate price was \$23,583,409. For group 2, United Salad’s total evaluated aggregate price was \$5,088,449, and Chico Produce’s total evaluated aggregate price was \$3,399,317. AR, Tab 3, Source Selection Decision Document at 12-13.

rejected as technically unacceptable. United Salad asserts that it “has analyzed the required delivery volumes, travel distances, and stops[,] and has determined that it would be impossible for Chico Produce to perform the majority of the work under the Contract, as it is required to do by the Solicitation.” Protest at 10. United Salad claims that Chico Produce’s distribution area is limited to Central and Northern California--while the areas to be serviced are in Oregon and parts of Washington--and “it is obvious that [Chico Produce] intends to subcontract most of the work to [a named subcontractor] and deliveries will be made from [the named subcontractor’s] facility, likely warehousing [fresh fruits and vegetables] at that facility and using [the named subcontractor’s] vehicles for delivery.” *Id.* at 10-11. In this regard, the protester asserts that the awardee’s proposal “should have prompted [the agency] to inquire as to the percentage of work Chico Produce intended to self-perform” and that, had the agency done so, it would have rejected the awardee’s proposal as technically unacceptable. *Id.* at 11.

As noted above, the RFP required that an offeror “must currently possess the physical, logistical, and financial resources to serve as a commercial distributor of a variety of [fresh fruits and vegetables] items.” RFP at 7. The RFP provided that “[i]t is neither sufficient nor acceptable for an offeror to be a third-party logistics (“3PL”) company (*i.e.*, a company that does not intend to serve as the [fresh fruits and vegetables] supplier but instead intends to subcontract out the majority of aspects required by the contract, including but not limited to ordering, warehousing, distribution, etc.)” *Id.* The RFP further provided that, “[b]y offering, an offeror affirms its status as a current and functioning commercial distributor of [fresh fruits and vegetables] items”; and that, in order to determine whether an offeror met this technical requirement, offerors were required to submit: (1) a valid and current Perishable Agricultural Commodities Act (PACA) license; and (2) a valid and current audit report with a passing score for each place of performance identified in the proposal. *Id.* at 7, 46.

The agency explains that, “[a]fter a thorough review, the Agency did not identify any areas of Chico [Produce]’s proposal that expressly took exception to the above limitation contained within the solicitation.” COS/MOL at 9. As the agency explains and the record shows, the agency asked Chico Produce during negotiations to confirm whether it would perform 51 percent, *i.e.*, a majority, of the work and what “counties/areas,” *i.e.*, locations, it would service. *Id.*; AR, Tab 14, Chico Produce Negotiation Letter Round Two at 2.

Chico Produce’s response during negotiations was that it “would like to confirm that after extensive evaluation of Groups 1 & 2 for the Oregon/Washington zones, we can perform at least 51 [percent] of the total work based on estimated contract value.” AR, Tab 15, Chico Produce Resp. to Negotiation Letter Round Two at 3. Specifically, Chico Produce discussed, in detail, various functions it would “directly manage,” “perform,” or “handle” in the areas of: product sourcing, customer service, product warehousing and order selection, outbound logistics, and accounting. *Id.* Chico Produce further stated that it and its subcontractor “will coordinate last-mile efforts to satisfy all [agency] requirements,” and that “[t]he full scope of distribution work, except for specified last-mile activity, will be handled directly by [Chico Produce] at all times.” *Id.* Chico Produce

also attached a spreadsheet demonstrating its proposed distribution and highlighting the “last-mile deliveries” that it would perform. *Id.*; *see also generally* AR, Attach. 2, Delivery Locations.

Based on this response, the agency evaluated Chico Produce’s proposal as technically acceptable. Above all, the agency found that Chico Produce submitted all information as required by the RFP—including a valid and current PACA license and a valid and current audit report<sup>4</sup>--and that the information “met the two sub-factors that determine technical acceptability.” AR, Tab 5, Source Selection Board Report at 24. The agency further noted in its evaluation report that the awardee “confirmed that they will do 51 [percent] of the work,” as well as the detail provided in the awardee’s response during negotiations. *Id.* at 22-23. In this regard, the agency explains its evaluation as follows:

As Chico’s response stated, it can perform at least 51 [percent] of the work, it detailed which aspects of the Contract it would be self-performing, and it highlighted which locations Chico would perform last-mile deliveries. Thus, Chico’s response was sufficiently responsive to the Agency’s inquiry. In addition, Chico’s response adequately addressed the Solicitation’s requirement by stating that Chico would be performing a majority of the work required by the resulting Contract.

Agency’s Supp. Resp. at 5.

In reviewing a protest challenging an agency’s evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency’s discretion. Rather, we will review the record to determine whether the agency’s evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *Computer World Servs. Corp.*, B-410513, B-410513.2, Dec. 31, 2014, 2015 CPD ¶ 21 at 6. A protester’s disagreement with the agency’s judgment, without more, is insufficient to establish that the agency acted unreasonably. *Vertex Aerospace, LLC*, B-417065, B-417065.2, Feb. 5, 2019, 2019 CPD ¶ 75 at 8.

We note that the RFP was issued on an unrestricted basis and did not include certain subcontracting limitations such as Federal Acquisition Regulation (FAR) clause 52.219-14, Limitations on Subcontracting. RFP at 55. In decisions where we have considered the applicability of such subcontracting limitations--which we find instructive to the circumstances here--we have also stated that, as a general matter, an agency’s judgment as to whether an offeror will comply with the subcontracting limitation clause is a matter of responsibility, and the contractor’s actual compliance is a matter of contract administration. *Geiler/Schrudde & Zimmerman*, B-412219 *et al.*, Jan. 7, 2016, 2016

---

<sup>4</sup> The evaluation report further noted that the audit report was “from an independent third-party certifying company for [Chico Produce’s] proposed place of performance” and that, per the terms of the RFP, “all places of performance will be required to pass the USDA [GAP/GMP] Audit prior to commencing performance.” *Id.* at 24.

CPD ¶ 16 at 7. Neither issue is one that our Office generally reviews. See 4 C.F.R. § 21.5(a), (c). However, as our Office has consistently stated, where a proposal, on its face, should lead an agency to conclude that an offeror has not agreed to comply with the subcontracting limitation, this matter concerns the proposal's acceptability. *Geiler/Schrudde & Zimmerman, supra*. This is because the limitation on subcontracting is a material term of the solicitation, and a proposal that fails to conform to a material term or condition in a solicitation is unacceptable and may not form the basis for an award. *Addx Corp.*, B-404888, May 4, 2011, 2011 CPD ¶ 89 at 3-4.

Here, we find no basis to sustain the protester's argument that the awardee's proposal took exception to the solicitation's requirements. As noted above, Chico Produce's proposal included the two pieces of information required by the RFP to determine that Chico Produce met the technical requirement of being a commercial distributor of fresh fruits and vegetables and the agency found both submissions to be acceptable. AR, Tab 5, Source Selection Board Report at 24. As also noted above, the record shows that the agency noted the awardee's response during negotiations that it would perform the majority of the work, including detail on the various aspects it would perform. *Id.* at 22-23; AR, Tab 15, Chico Produce Resp. to Negotiation Letter Round Two at 3. The agency found the awardee's response acceptable because it affirmed Chico Produce's "status as a current and functioning commercial distributor of [fresh fruits and vegetables] items" as required by the RFP. RFP at 7; see *also* AR, Tab 5, Source Selection Board Report at 22-23. United Salad has not established that the awardee's proposal, on its face, indicated that the awardee would not comply with the solicitation's requirements or otherwise took exception to the terms of the RFP.

As an example of its various points of contention, United Salad questions the extent to which Chico Produce satisfactorily established that it would perform the warehousing aspect of the work under the RFP. In this regard, United Salad notes that Chico Produce's response stated that it would "directly manage all warehousing and order selection activities for all products from our distribution center located in Durham, [California]." AR, Tab 15, Chico Produce Resp. to Negotiation Letter Round Two at 3. In the protester's view, "it seems logical that it means that [Chico Produce] will 'manage' [the named subcontractor's] warehouses in the Pacific Northwest from its distribution center in Durham, California," and "[s]uch an arrangement obviously does not comply with the solicitation requirement that an offeror 'store' [fresh fruits and vegetables] itself." Comments at 7.

We find no basis to disagree with the agency's view that the protester's allegation "appears to make a great leap in logic based on the single word 'manage' being included in Chico's response." Agency's Supp. Resp. at 4. The agency also questions the protester's assumption that Chico Produce would rely on warehouses operated by its named subcontractor in the Pacific Northwest--specifically, a warehouse located in Oregon, "despite this warehouse not being listed in Chico [Produce]'s places of performance and never once being mentioned during the course of this acquisition." *Id.* While the protester disagrees with various aspects of the agency's evaluation, it has not

demonstrated that the agency's evaluation was unreasonable or inconsistent with the terms of the solicitation. Under these circumstances, this protest ground is denied.

### Identity of Awardee

Second, United Salad contends that the agency should have rejected Chico Produce's proposal based on an alleged "ambiguity" as to the awardee's identity. Protest at 12. The protester notes that, during its debriefing, the agency first referred to the awardee as "Pro Pacific Fresh" and later as "Chico Produce, Inc." *Id.* at 8, *citing* Protest, exh. 6, Debriefing. The protester then contends that, based on the "inconsistent statements" in the debriefing, "it seems apparent that there is ambiguity regarding whether Chico Produce or [Pro Pacific Fresh] was the proposer." Protest at 12. The protester then presents several pieces of information it collected through various database searches to further question the awardee's identity. *Id.* at 13-14; Comments at 9-10.

As noted above, the RFP required offerors to provide a CAGE code. RFP at 3. The record shows that the first page of the awardee's proposal listed CAGE code "06HD5"--which matched the CAGE code assigned to Chico Produce in the SAM.gov database--and the name of the offeror as "Chico Produce, Inc. DBA: Pro Pacific Fresh." AR, Tab 16, Chico Produce Proposal at 1, 3; AR, Tab 17, Chico Produce SAM.gov Registration. The record also shows that the first page of the awarded contract listed the same CAGE code, as well as the name of the awardee as "Chico Produce, Inc. DBA Chico [sic] Produce Inc."<sup>5</sup> AR, Tab 6, Contract at 1. This is consistent with other instances in the record, such as the source selection decision document noting the same CAGE code and the name of the offeror as "Chico Produce, Inc., DBA Pro Pacific Fresh." AR, Tab 3, Source Selection Decision Document at 2.

In addition, the RFP required offerors to provide a PACA license. RFP at 46. The record shows that the PACA license submitted in the awardee's proposal was issued to "Chico Produce Inc," while listing "ProPacific Fresh" under the category of "multiple trade names and branches." AR, Tab 18, Chico Produce Submitted PACA License at 1. The agency noted this in its source selection decision document in finding the proposal technically acceptable. AR, Tab 3, Source Selection Decision Document at 13.

On this record, the agency argues that, "[a]s both Chico [Produce]'s legal name and CAGE code appear on both the proposal and the awarded Contract, the Agency is sufficiently certain that Chico Produce, Inc., is the actual bidder here and will be unable to avoid the obligations imposed upon it as the awardee." COS/MOL at 12. In the agency's view, the protester's claim is "without merit as there is no legal uncertainty that

---

<sup>5</sup> The record shows that, in executing the contract, Chico Produce advised the agency that the dba designation in the contract was incorrect and should have read ProPacific Fresh. The agency explained the dba designation was generated from information in "the vendor master for 06HD5" in SAMS and requires a change in SAM to change the contract. AR, Tab 19, Email from Chico Produce Regarding DBA Contract Error, Sept. 29, 2023.

Chico Produce, Inc. is the legal name that appears on both the signed initial offer and the signed Contract document, while use of the name Pro Pacific Fresh on ancillary documentation was merely in reference to Chico's frequently used trade name." *Id.* at 11.

Uncertainty as to the identity of an offering entity renders an offer technically unacceptable, since ambiguity as to an offeror's identity could result in there being no party bound to perform the obligations of the contract. See *Raytheon Co.*, B-409651, B-409651.2, July 9, 2014, 2014 CPD ¶ 207 at 6; *W.B. Constr. & Sons, Inc.*, B-405874, B-405874.2, Dec. 16, 2011, 2011 CPD ¶ 282 at 4. The information readily available, such as CAGE codes, must reasonably establish that differently identified entities are in fact the same concern. See *Intelligent Invs., Inc.*, B-406347, B-406347.2, Apr. 27, 2012, 2012 CPD ¶ 193 at 4-5; *W.B. Constr. & Sons, Inc.*, *supra* at 4. As a general matter, the entity awarded the contract should be the entity that submitted the initial proposal. See *W.B. Constr. & Sons, Inc.*, *supra* at 4-5.

Here, United Salad has not sufficiently established that there is ambiguity regarding Chico Produce's identity as the contractor that was bound to perform the obligations of the contract. As noted above, Chico Produce provided a CAGE code as required by the RFP, and the agency noted this CAGE code in its source selection documentation and the awarded contract. CAGE codes are assigned to discrete business entities by the Defense Logistics Agency and are used to dispositively establish the identity of a legal entity for contractual purposes. See *Raymond Express Int'l, LLC*, B-409872.3 *et al.*, Sept. 11, 2015, 2015 CPD ¶ 265 at 6. Indeed, United Salad acknowledges that it did not find a separate CAGE code under the name Pro Pacific Fresh. Protest at 13.

Moreover, as noted above, Chico Produce provided a PACA license as required by the RFP, which the agency noted in its source selection document in finding the proposal technically acceptable. United Salad also acknowledges that it did not find a separate PACA license under the name Pro Pacific Fresh. Protest at 14 n.4.

Nonetheless, United Salad presents various pieces of information in support of its allegation, none of which are dispositive. For example, United Salad asserts that it found two data universal numbering system (DUNS) numbers for Chico Produce and two DUNS numbers for Pro Pacific Fresh. Protest at 14, *citing* Protest, exh. 15, DUNS Search Results, Oct. 16, 2023. DUNS numbers are established by Dunn & Bradstreet Information Services for purposes of establishing the precise identification of a business. See *Raymond Express Int'l, LLC*, *supra*. As noted above, however, the RFP required the offeror to provide a CAGE code; the RFP did not require the offeror to provide a DUNS number. RFP at 3.

As another example, United Salad points to information it sought from California Secretary of State records that show separate entity numbers for Chico Produce and Pro Pacific Fresh; however, the protester has not established that this information was available to the agency, or that the agency was required to seek out this information, during the course of the procurement. Protest at 13, *citing* Protest, exh. 11, California



Secretary of State Statements of Information; see *W.B. Constr. & Sons, Inc.*, *supra* at 5 (finding documents provided by the protester from the Louisiana Secretary of State to be persuasive, but not the only or dispositive consideration). In all, under these circumstances, this protest ground is denied.

## Price Evaluation

Finally, United Salad argues that “Chico Produce’s price is, on its face, unrealistically low” and, “[h]ad the Contracting Officer conducted the determination required by the Solicitation, she would have determined that Chico Produce’s unrealistically low price posed a performance risk.” Protest at 15-16. In this regard, United Salad insists that “an agency may properly evaluate an unrealistically low price as a performance risk.” Comments at 13, *citing Derivative, LLC*, B-420687.3, B-420687.4, May 12, 2023, 2023 CPD ¶ 119.

As noted above, the RFP contemplated the award of a fixed-price contract and provided that, for the presumptive awardee, the agency would evaluate prices “on an individual line-item basis to determine whether each price is fair and reasonable using analytical techniques deemed appropriate by the Contracting Officer in her/his complete discretion.” RFP at 7-8, 46. The agency argues that, “since a price realism analysis requirement is not contained in the Solicitation, the Agency is not permitted to analyze whether Chico [Produce]’s pricing is too low.” COS/MOL at 14.

As a general matter, when awarding a fixed-price contract, an agency is only required to determine whether the offered prices are fair and reasonable, that is, whether proposed prices are too high. FAR 15.402(a). A price realism evaluation, in contrast, applies cost realism analysis techniques to fixed prices for the limited purpose of assessing an offeror’s understanding of the requirements or to assess the risk associated with an offeror’s low price. FAR 15.404-1(d)(3); *Ball Aerospace & Techs. Corp.*, B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 8. While an agency may conduct a price realism analysis in awarding a fixed-price contract for the limited purposes of assessing whether an offeror’s low price reflects a lack of technical understanding or risk, offerors must be advised that the agency will conduct such an analysis. *DynCorp Int’l LLC*, B-407762.3, June 7, 2013, 2013 CPD ¶ 160 at 9. Absent a solicitation provision providing for a price realism evaluation, agencies are neither required nor permitted to conduct one in awarding a fixed-price contract. *Id.*

Here, we reject United Salad’s position that it is “not arguing that [the agency] was required to perform a cost realism analysis, but instead should have considered the performance risk posed by Chico Produce’s facially unrealistic price, which it is clearly permitted to do.” Comments at 13; see, e.g., *Hendall, Inc.*, B-417513.3, B-417315.4, Feb. 24, 2020, 2020 CPD ¶ 87 at 8-9 (rejecting protester’s argument that its protest ground was “not a veiled price realism challenge”). The protester cites to our decision in *Derivative* for the proposition that the agency was permitted to conduct such an analysis because, “[e]ven when performance risk is not specifically listed in the solicitation as an evaluation factor, an agency may always consider risk intrinsic to the

stated evaluation factors.” *Derivative, supra* at 9. The protester’s reliance on *Derivative* is misplaced because that decision contained a number of circumstances not found here, including a cost realism analysis conducted pursuant to the award of a cost-reimbursement contract, where the solicitation both provided for that analysis and advised that the results of that analysis could be used in performance risk assessments. *Id.*

By contrast, the RFP here provided for the award of a fixed-price contract, and neither required nor permitted the agency to perform a price realism analysis. The record shows that the agency evaluated Chico Produce’s price for reasonableness, consistent with the terms of the RFP. Because the RFP did not permit the analysis that the protester suggests the agency failed to perform, we have no basis to review the argument. Therefore, this protest ground is dismissed.

The protest is denied in part and dismissed in part.

Edda Emmanuelli Perez  
General Counsel