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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Riveer Company

**File:** B-279723

**Date:** July 14, 1998

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Matt Petter for the protester.

Joshua A. Kranzberg, Esq., and Laurence M. Smail, Esq., Department of the Army, for the agency.

Adam Vodraska, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Contracting agency reasonably evaluated protester's proposal as technically unacceptable for failing to meet material solicitation requirements and properly excluded the proposal from the competitive range because the proposal would require major revisions to become acceptable.

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## DECISION

Riveer Company protests the rejection of its proposal and the award of a contract to The Centech Group, Inc. under request for proposals (RFP) No. DAAH10-98-R-0004, issued by the U.S. Army Aviation and Missile Command, Aviation Applied Technology Directorate, Fort Eustis, Virginia, for a prototype aircraft cleaning and deicing system (ACDS). The prototype ACDS will be used for operational evaluation by the contracting agency to establish the requirements for a production model ACDS.

We deny the protest.

The RFP, issued February 11, 1998, as a total small business set-aside under the commercial item procedures of FAR part 12, contemplated the award of a fixed-price contract to the responsible offeror whose offer conforming to the solicitation represents the best value to the government, price, technical and past performance factors considered. RFP at 1, 10, 19. The technical factor was of paramount importance and price was more important than past performance. RFP at 19. According to the RFP, proposals would be evaluated under the technical factor to assess whether the proposed ACDS will likely meet the minimum government requirements. Id.

The RFP incorporated a modified version of the standard provision "Instructions To Offerors--Commercial Items," FAR § 52.212-1, which informs offerors that the government intends to evaluate offers and award a contract without discussions (but reserves the right of the government to conduct discussions if necessary) and that initial offers should therefore contain an offeror's best terms from a price and technical standpoint. FAR § 52.212-1(g).

The solicited ACDS is a portable stand-alone piece of equipment with a self-contained power source. It will operate by spraying cleaners/solvents, deicing fluid or water through a nozzle and wand assembly at the temperature and pressure appropriate for the task. Because the runoff from washed aircraft and components (e.g., engines) typically contains soap, dirt, grease, and other contaminants, the ACDS is required to provide an environmentally safe method of washing aircraft in a field environment by utilizing a portable containment system that will catch runoff and return the runoff to the ACDS for processing so that the fluid is clean enough for use in washing more aircraft or for proper disposal.

The RFP's statement of work (SOW) required, among other features, that the ACDS:

C-1.7. Provide the capability to catch, collect, and recover fluid runoff. . . . When aircraft wash water is recovered the ACDS must provide the capability to process the effluent to meet U.S. Environmental Protection Agency (EPA) and foreign environmental standards. The following levels of contamination are representative of the effluent following a typical aircraft wash cycle:

. . . . .

The ACDS will process this effluent so that after eight typical aircraft wash cycles the effluent will have no greater than the following levels of contamination:

. . . . .

C-1.10. . . . The gross weight of the ACDS must not exceed 4200 lbs.

. . . . .

C-1.13. Have sufficient water capacity through the use of effluent processing to operate not less than 2 hours. . . . The total water storage capacity shall not exceed 200 gallons. The clean fluid source and the processed fluids recovered from the containment system shall be stored separately. The clean fluid will be used primarily for rinse

operations whereas the processed fluid will be used primarily for washing operations.

RFP at 12, 13.

Riveer and Centech were among the offerors that submitted proposals by the March 13 due date. After evaluating Riveer's technical proposal, the agency evaluators concluded that Riveer's proposal was technically unacceptable because its proposed ACDS did not provide the capability to process effluent from the runoff as required by SOW paragraph C-1.7, and it did not provide the capability to store the processed fluids and the clean fluids separately as required by SOW paragraph C-1.13. The evaluators recommended that Riveer's proposal not be included in the competitive range because significant revisions necessitating a reengineering of its offered system would be necessary to make its proposal acceptable. According to the evaluators, Riveer would have to reconfigure its filtration systems to meet EPA requirements and significantly redesign its ACDS to prevent contamination of the clean water.

On April 6, the contracting officer informed Riveer that its proposal was not included in the competitive range, with the following explanation:

Your proposal indicates that your ACDS will provide 120 gallons of beginning wash water. The stated reason for doing so is to meet the maximum 4200 lbs. [gross weight] required by C-1.10. Your proposed system does not provide the capability to store processed fluids and the clean fluids separately as required by C-1.13. There is reasonable doubt that this approach will enable you to meet the requirements of C-1.7 and C-1.13. The proposed approach assumes that the effluent treatment system is both effective in removing essentially 100% of the identified contaminants and 100% of soap. The filtration system vendor's brochure enclosed with the proposal does not support this claim with respect to removal of soap. Even assuming that your ACDS is capable of removing the soap, prior experience with effluent treatment systems indicates that we can expect that the level of contaminants will rise as the number of aircraft washed increases. The solicitation states that processed water will be used for wash operations and clean water will be used for rinse operations. Your approach to using processed water for rinse operations is considered to be a questionable procedure and is high risk.

Based on the technical, price, and past performance evaluations, the contracting officer, who was the source selection authority for this procurement, concluded that Centech's proposal provided the best value to the government, and awarded the contract to Centech on April 6 for \$69,540.13.

Riveer protests that its offer was erroneously found to be technically unacceptable, and contends that its proposal clearly showed that it was in compliance with the SOW in all respects and that it should receive the award because its price was lower than Centech's.

The evaluation of proposals and the resulting determination of whether an offer is in the competitive range are matters within the discretion of the contracting agency, since that agency is responsible for defining its needs and the best method of accommodating them. Laboratory Sys. Servs., Inc., B-256323, June 10, 1994, 94-1 CPD ¶ 359 at 2. In reviewing an agency's technical evaluation, we will not reevaluate the proposal, but instead will examine the agency's evaluation to ensure that it was not arbitrary or in violation of the procurement laws and regulations. Id. Where a proposal is technically unacceptable as submitted and would require major revisions to become acceptable, the agency is not required to include the proposal in the competitive range. Id.

Based on the record, we think the agency reasonably concluded that Riveer's proposal was technically unacceptable for failing to meet the material solicitation requirements of SOW paragraph C-1.13, namely that the clean fluid source and the processed fluids recovered from the containment system be separately stored, and that the clean fluid be used primarily for rinse operations.

The record shows that Riveer's proposal was premised on its ACDS continuously processing recovered runoff (effluent) to rinse-quality water, so as to meet the SOW's 2-hour operating requirement and the 4,200-pound maximum weight limitation with a beginning water storage capacity of only 120 gallons. (The 120-gallon water storage capacity of Riveer's ACDS consists of a 40-gallon chamber for wash water and a separate 80-gallon bladder for rinse water.) Specifically, after wash operations are commenced and the effluent collected by the containment system and returned to Riveer's ACDS, the effluent is processed through several stages of filtration to meet the EPA guidelines incorporated in SOW paragraph C-1.7. After the first stages of filtration, the processed effluent is clean enough for continued wash operations and some of this "filtrate" is stored in the 40-gallon chamber for continued use in washing aircraft. The next stages involve the continued filtering of the filtrate not used for wash water so that it is suitable to be used as "clean" rinse water. This rinse-quality "permeate" is stored in the 80-gallon bladder, which is where the clean unprocessed water may be stored under SOW paragraph C-1.13 prior to being employed in the operations of the ACDS, for use as rinse water.

Although Riveer's ACDS is configured to separately draw rinse water and wash water during operation, all the water used by the system is "processed" as either filtrate or permeate and reused continuously, and thus there is no separation of processed from unprocessed fluid as required by the RFP. Indeed, any clean unprocessed water that may be added initially to the 80-gallon bladder as rinse

water will not be separated from the processed water because the permeate is returned to the 80-gallon bladder during operation.<sup>1</sup> Thus, Riveer's ACDS does not have the capability to store the processed fluids and the clean fluid source separately, as required. Moreover, while Riveer's approach may very well have merit if its filtration systems work as well as it claims, Riveer's ACDS also does not comply with the RFP's minimum requirement that the clean (unprocessed) fluid be used primarily for rinse operations because the permeate used for rinsing is processed fluid.<sup>2</sup>

Riveer does not argue that the requirements of SOW paragraph C-1.13 were not material, and the contracting officer states that "each and every specific performance requirement was required (not just desired)." Further, the record evidences that the requirements of SOW paragraph C-1.13 reflect the agency's prior experience with effluent treatment systems (including an earlier demonstration version of Riveer's ACDS) which indicated that the level of contaminants could be expected to rise as the number of aircraft washed increases, thus necessitating the use and separate storage of clean unprocessed water for rinsing. While Riveer argues that its approach ensures "clean" rinse water, thus making the SOW's distinction between clean fluid and processed fluid meaningless, Riveer should have protested any aspects of SOW paragraph C-1.13 it found objectionable prior to the due date for submission of proposals, as is required to timely protest an alleged solicitation impropriety. 4 C.F.R. § 21.2(a)(1) (1998).

Because Riveer's proposal was premised on continuous processing of effluent into rinse-quality water, we agree with the agency that Riveer would have to make major revisions to its proposed ACDS to become acceptable, such as by increasing the size of its rinse water storage capacity to meet the 2-hour operational requirement without exceeding the maximum weight limitation and redesigning its filtration

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<sup>1</sup>This is why the agency considered Riveer's rinse water "contaminated" by the processed effluent.

<sup>2</sup>We note that Riveer's proposal itself essentially recognized that its ACDS involved an alternate approach to satisfying the requirements of SOW paragraph C-1.13 that may not literally comply with the requirements as stated. Riveer Technical Proposal at 14.

systems so that permeate is no longer processed into rinse water. Accordingly, the agency was not required to include Riveer's proposal in the competitive range.<sup>3</sup>

The protest is denied.

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<sup>3</sup>Since the agency could reasonably exclude Riveer's proposal from the competitive range for its noncompliance with SOW paragraph C-1.13, we need not consider whether the agency reasonably concluded that Riveer's ACDS did not have the capability to process effluent from the runoff as required by SOW paragraph C-1.7, the other reason given by the agency for finding Riveer's proposal technically unacceptable.