



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Staber Industries, Inc.

File: B-276077

Date: May 9, 1997

James E. Staber II for the protester.

Marie Adamson Collins, Esq., General Services Administration, for the agency.
Jeanne W. Isrin, Esq., and John M. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that solicitation's life cycle cost (LCC) evaluation formula should include water and detergent consumption cost factors for washing machines is denied, since (1) there is no statutory or regulatory requirement that such a factor be used, (2) the agency has not yet determined whether consideration of those costs is feasible or, if so, what factor should be used, and (3) the existing LCC formula was formulated using data from Department of Energy regulations applicable to washing machines.

DECISION

Staber Industries, Inc. protests provisions of invitation for bids (IFB) No. 6FES-B1-96B102-S, issued by the General Services Administration for indefinite quantities of clothes washers, drying tumblers, and dishwashing machines.

We deny the protest.

The IFB, which contemplates award of a fixed-price requirements contract, contains specifications and estimated quantities for 21 different types of machines. Bid prices for the machines are to be evaluated to determine life cycle cost (LCC) using formulas provided in the solicitation. For this purpose, bidders are required to provide energy consumption data for each offered machine. Award is to be made on an item-by-item basis to the firm submitting the lowest acceptable evaluated price for each item.

Staber maintains that the IFB's LCC formula for clothes washers will not accurately measure cost (specifically as to line items 43-45) because, although it factors in energy cost, it fails to take into account the cost of water and detergent consumption. Staber asserts that the formula therefore contravenes Executive Order No. 12902, "Energy Efficiency and Water Conservation at Federal Facilities," March 8, 1994, 59 Fed. Reg. 11463 (1994) (hereinafter "EO 12902"), and the Energy

Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776 (codified in scattered sections of Titles 16, 25, 26, 30, and 42 of the United States Code) ("EP Act").

Agencies have broad discretion in selecting evaluation factors appropriate for an acquisition, and we will not object to the absence or presence of particular factors, so long as the factors used reasonably relate to the agency's needs in choosing a contractor that will best serve the government's interests. ViON Corp., B-256363, June 15, 1994, 94-1 CPD ¶ 373 at 10; U.S. Defense Sys., Inc., B-251544 et al., Mar. 30, 1993, 93-1 CPD ¶ 279 at 5. This discretion carries over to LCC analyses; the contracting agency is in the best position to assess the impact of various factors on future costs, and its informed judgments are properly within its administrative discretion. ViON Corp., supra.

Staber's arguments are without merit. There is no statutory or regulatory requirement that water and detergent consumption be factored into an LCC evaluation. First, section 702 of EO 12902 states that the order "is intended only to improve the internal management of the executive branch and is not intended to, and does not create, any right to administrative or judicial review." Thus, by the terms of the order itself, any failure by GSA to adhere to the order's provisions would not provide a basis for protest. In any case, EO 12902 nowhere requires that agencies take into account water and detergent consumption in procurements such as the one here; rather, it focuses primarily on the need for agencies to develop and implement programs intended to reduce energy consumption and conserve water in federal facilities and buildings. The only provision that speaks to procurements of items such as those here, section 507(a), requires only that agencies purchase energy-efficient products from listings developed by the Office of Management and Budget in consultation with other agencies, pursuant to section 161 of the EP Act; this listing is not in issue here. Finally, we note that EO 12902, section 112, defines LCC as "the total cost of owning, operating, and maintaining a building, over its useful life (including its fuel, energy, labor, and replacement components) determined on the basis of a systematic evaluation and comparison of alternative building systems." 10 C.F.R. § 436.11 (1996). Neither water nor detergent consumption is among the factors encompassed by this definition.

Similarly, the EP Act (as relevant here) refers only to energy efficient products. In this regard, section 161 of the Act, 42 U.S.C. § 8262g (1994), entitled "Procurement and identification of energy efficient products," requires that GSA (and certain other agencies), in consultation with the Department of Energy (DOE), "implement, in conjunction with carrying out their procurement and supply functions, a program to identify and designate those energy efficient products that offer significant potential savings, using, to the extent practicable, the life cycle cost methods and procedures developed under section 8254. . . ." 42 U.S.C. § 8262g. The statute also provides for the issuance of guidelines to encourage the acquisition and use by all federal agencies of energy efficient products. The statute does not refer to water or

detergent consumption. Thus, the terms of the EP Act do not require GSA to factor water and detergent consumption into its LCC analysis.¹

GSA based its LCC formula on uniform test procedures for measuring energy consumption for different types of appliances, as set forth in Department of Energy regulations, 10 C.F.R. § 430.23, and is specifically based on data set forth in 10 C.F.R. § 430.23(j), which deals with clothes washers. Given that neither law nor regulation compels consideration of water/detergent consumption in an evaluation, and that nothing in the provision (or elsewhere in the regulations) references water or detergent costs, GSA's formula is reasonable.

We note that, in responding to Staber's protest, GSA personnel reviewed the possibility of using a water/detergent consumption factor in its evaluation. While the record in this regard suggests that GSA does not disagree that use of such a factor theoretically could result in a more accurate LCC determination, it also shows that the agency questions whether the cost to the government of water/detergent consumption would be significant enough to warrant evaluation, and whether a meaningful factor can be developed in light of the numerous variables involved. In this latter regard, since the washing machines here are to be used throughout the country, and water/sewerage rates vary significantly among locales, different factors might have to be developed and applied depending upon where machines will be located. In any case, it is clear that the agency currently lacks the information necessary to develop a reliable water/detergent factor that could be applied under this IFB. See ViON Corp., supra at 10-11.²

The protest is denied.

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¹We also note that Federal Acquisition Regulation subpart 23.2, establishes energy conservation as a mandatory consideration in acquisitions, but does not refer to water or any other type of conservation.

²Staber urges that the LCC analysis be based on the National Institute of Standards and Technology (NIST) Handbook 135, paragraph 5.1.2, which contains factors for both water and other non-fuel operating costs. However, given that the agency has not yet determined whether evaluating water consumption and other costs is feasible or, if so, which variables should be included in any formula, there is no basis for compelling the agency to use the NIST standard in the LCC evaluation here.