

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: A-203855.3, B-203855.4 DATE: August 23, 1982
B-203855.5, B-203855.6
MATTER C/F: Niedermeyer-Martin Co.;
Western Utility Pole Producers;
Pacific Rim Trade Association
DIGEST:

Continuing exclusion of Douglas fir poles from grantee procurements in Peoples Republic of Bangladesh is supported by 1979 letter to grantor from United States Forest Products Laboratory and statement by representative of Defense Construction Supply Center that current, relevant Federal specification needs "clarification or revision." Nevertheless, since record also contains recent communications--in nature of "blanket" representations--from laboratory and center that suggest poles may be suitable, GAO recommends grantor obtain comprehensive reviews from these organizations on technical issues involved to determine if Douglas fir poles may be acceptable for future procurements.

Niedermeyer-Martin Co. (Niedermeyer) has complained about the continued exclusion of one of its "principal products [Douglas fir poles]" from consideration for use in the Peoples Republic of Bangladesh under procurements financed by loan and grant agreements made by the Agency for International Development (AID) pursuant to project 388-0021. Niedermeyer also requests reconsideration of our decision in Niedermeyer-Martin Co., B-203855, July 17, 1981, 81-2 CPD 48.

We could not question the exclusion of Douglas fir poles under earlier procurements. See Niedermeyer-Martin Co., 59 Comp. Gen. 73 (1979), 79-2 CPD 314. As we stated in that decision:

"We acknowledge that the record contains information concerning how * * * use [could be made] of the Douglas fir. However, the record

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also includes documentation showing that [Bangladesh's needs] reasonably excluded the Douglas fir * * *. Although Niedermeyer may disagree with [the exclusion], we do not consider that Niedermeyer has shown [the exclusion] to be unreasonable."

In connection with recent AID-financed procurements of poles in Bangladesh, Niedermeyer continues to insist that the exclusion is unreasonable. The company's positions are supported by the Western Utility Pole Producers and the Pacific Rim Trade Association.

We deny the complaints and request for reconsideration.

Although the record on this continuing controversy is extremely voluminous, Niedermeyer says that its present complaint is mainly supported by letters from representatives of the Forest Products Laboratory (FPL), Department of Agriculture, and the Defense Construction Supply Center (DCSC), Columbus, Ohio. Additionally, Niedermeyer notes that its position is also supported by Professor Robert D. Graham, Department of Forest Products, Oregon State University.

FPL originally commented to AID on the principal reason for the exclusion of the Douglas fir for these procurements in a letter dated May 24, 1979. That letter conveys a perspective on the entire controversy and reads:

"* * *[AID has] asked, '... whether the exclusion of Douglas fir as an acceptable species for installation in Bangladesh, ... is justified.'

"We do not have experience with the performance of treated wood products in Bangladesh and cannot authoritatively respond directly to your question. Our

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experience with treated wood products is mostly within the United States. We have a major field plot in Southern Mississippi. "From telephone conversations with [one of the consultants for the Bangladesh specifications], I understand that, in his opinion, penetration of the wood preservative must be at least 3 inches in order to achieve adequate protection against decay in that area. Because of our limited geographic exposure, we are not in a position to question that decision.

"It is our understanding that most of the poles which are to be installed will be of small diameter. Such poles would likely have a rather thin band of sapwood. Thus, it seems doubtful that, without deep incising, a 3-inch penetration could be achieved. To get a 3-inch penetration, heartwood would have to be treated.

"Some penetration of Douglas-fir heartwood in incised, sawn materials is accomplished with [the chemical] ACA, but we are not in a position to speculate whether the 3-inch penetration requirement could be achieved through incising poles. It may also be assumed that deep incising would have some effect on the strength of the poles. This may require reconsideration of minimum diameters of incised poles to achieve the same strength properties as unincised poles. I noted that ACA was not accepted for use in Bangladesh, even though it is included in the United States Rural Electrification Administration specifications.

"In summary, the exclusion of Douglas-fir as an acceptable species for Bangladesh reflects the determination that a penetration of preservative into utility poles to a depth of at least 3 inches is needed to

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provide a durable pole in that environment. It further reflects a reasoned assumption that penetration depths of 3 inches will not be achieved with Douglas fir that might be supplied for these purposes. Given that requirement for a 3-inch penetration, the exclusion of Douglas-fir seems to be a prudent decision."

Niedermeyer notes that in a more recent letter, dated February 23, 1982, another representative of FPL has informed the company that "[the representative sees] no reason why Douglas fir treated [in accordance with Federal Specification TT-W-571--prepared by FPL] would not be adequate for use in Bangladesh, the Philippines, Panama, or any other country." Further, in a letter dated December 29, 1981, a DCSC representative also stated that "there is no reason poles destined for tropical climates cannot be treated [under the Federal Specification]"; however, the DCSC representative noted that DCSC and FPL recognized that "several areas of the specification are in need of clarification or revision." And, finally, Professor Graham, in several communications of record, has generally supported Niedermeyer's position concerning Douglas fir poles. Specifically, Professor Graham insists that Douglas fir poles need only be treated to a penetration standard of 0.75 inch, which is the penetration found in the Federal specification for Douglas fir.

In reply to the recent letter from the FPL, AID states that the letter does not show whether the FPL writer was aware of the "unique conditions encountered on the [Bangladesh] job-site" or whether the writer has "experience * * * on the matter in question." "Without these answers," AID states, "the blanket representation [in the letter] has no probative value." AID has not commented on the DCSC letter, but AID would presumably have concerns similar to those expressed toward the FPL letter in view of the "blanket representation" also contained in the DCSC letter. AID therefore reaffirms its conclusion that the "Douglas-fir is not an appropriate species for use in Bangladesh."

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The purpose of our review is to determine whether the grantee has complied with the applicable statutes, regulations and grant terms which require nonrestrictive procurements assuring the broadest practicable competition in the statement of needs. We will not dispute a procuring activity's needs determination unless it is clearly shown to be unreasonable. See Niedermeyer-Martin Co., above. Moreover, we have consistently held that in technical disputes a protester's disagreement with the procuring activity's opinion, even where the protester's position is supported by expert technical advice, does not invalidate the procuring activity's opinion. See London Fog Company, D-205610, May 4, 1982, 82-1 CPD 418.

As noted in our earlier decision, Professor Graham and others have suggested that Douglas fir poles could reasonably be used in Bangladesh. However, documentation exists that reasonably justifies the exclusion of this species. Specifically, the May 1979 FPL letter, noted above, which describes the issue in some detail, unlike the most recent FPL letter written by another writer, concluded that the exclusion seems to be a "prudent decision." Moreover, the DCSC letter acknowledges that the relevant Federal specification needs "clarification or revision," which also lends support to AID's position that the Federal specification is not currently shown to meet Bangladesh's needs. In these circumstances, we cannot say that the exclusion of Douglas fir is unreasonable.

Therefore, the complaints are denied and our prior decision is affirmed.

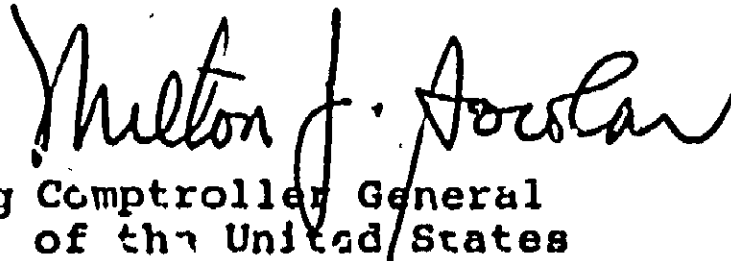
Nevertheless, we cannot ignore the recent "blanket" representations from the DCSC about Douglas fir suitability in tropical areas. Therefore, we recommend that AID obtain from these organizations comprehensive reviews--to the extent these organizations are willing to provide them--of the suitability of Douglas fir poles in climatic zones similar to Bangladesh's climatic zones (characterized, according to AID, by "extreme insect infestation, flooding and

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typhoon winds"). These reviews should contain a description of the writers' experience and qualifications and discuss the question whether these poles might also be suitably preserved in Bangladesh with the chemical ACA or some other suitable preservative. ACA, although it is apparently not currently authorized in these procurements, was favorably mentioned as a preservative in the 1979 FSL letter, above.

If these reviews reasonably suggest that Douglas fir poles are suitable for use in Bangladesh for future procurements, the current specifications should be so revised.



Acting Comptroller General
of the United States