

DECISION

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

Helperin
PL-I
29324

FILE: B-203855.7

DATE: September 18, 1984

MATTER OF: J.C. Taylor Lumber Company, et al.

DIGEST:

Complaints alleging that specifications used for grant procurements of electrical utility poles, by the Rural Electrification Board of Bangladesh, are unduly restrictive are denied where complainants have failed to show that the needs determination is unreasonable.

J.C. Taylor Lumber Company (Taylor) and a number of other Douglas fir producers have complained about the allegedly discriminatory nature of the specifications presently being used for the purchase of electrical utility poles by the Rural Electrification Board of Bangladesh (REB) under procurements financed by grants from the Agency for International Development (AID).

Taylor contends that the specification does not permit Boulton Drying, a standard which Taylor states is "for Douglas Firs used worldwide and by all United States Government agencies." Taylor also argues that the specification requirement for deep incising or drilling in the groundline area is "a practice not used by utilities today for distribution size pole [and which] adds substantially to the cost and effort to produce Douglas Fir poles." Taylor contends that the specification should permit the use of the preservative creosote. Finally, Taylor argues that the requirement that 44 percent of the radius of the poles be penetrated with preservative is outside the accepted standard for treating wood poles as presently shown under federal specification TT-W-571-J. Taylor contends that Douglas fir poles of the sizes specified, treated in accordance with specification TT-W-571-J, but with a higher retention (as permitted under the specification), rather than with a greater penetration, which Taylor argues is not permitted under the specification, will perform satisfactorily in Bangladesh.

The purpose of our review of grant complaints is to determine whether the grantee has complied with the applicable statutes, regulations and grant terms which

030026

require nonrestrictive procurements assuring the broadest practicable competition. However, we will not dispute a procuring activity's needs determination unless it is clearly shown to be unreasonable. See Niedermeyer-Martin Co.; Western Utility Pole Producers; Pacific Rim Trade Association, B-203855.3, et al., Aug. 23, 1982, 82-2 C.P.D. ¶ 162.

In its April 10, 1984, report to our Office, AID states that the Boulton Drying process is allowed by the REB specifications. This aspect of the complaint is, therefore, academic.

Taylor contends that specification section 2.3.6, which provides for deep incising or drilling in the groundline area of the poles, would add substantially to the cost and effort to produce Douglas fir poles because it may be necessary to increase the Douglas fir pole size to accommodate a possible strength loss due to the incising or boring. AID responds that it is obvious on its face that this requirement applies across the board to all trees and, therefore, is not discriminatory against any species. AID states that "additional costs to the supplier would only be incurred if the product delivered fails to meet the standards of the contract--hardly an act of discrimination." We agree with AID. Since Taylor has neither shown that deep incising or drilling discriminates against Douglas fir producers or is a requirement which exceeds the needs of the REB, it has not met its burden of affirmatively proving its case. See Protex Systems, Inc., B-213228, Mar. 5, 1984, 84-1 C.P.D. ¶ 265. In any event, even if Douglas fir producers were to be placed at a competitive disadvantage, AID is not required to cast the procurement in a form, which neutralizes the competitive advantages, which some concerns enjoy over others by virtue of their own particular circumstances. See Secure Engineering Services, Inc., B-202496, July 1, 1981, 81-2 C.P.D. ¶ 2.

Taylor states that section 2.3.9 of the specification should permit the use of the preservative creosote because it has broad worldwide acceptance. AID argues that the matter of excluding creosote has been raised and decided before. In Niedermeyer-Martin Co., 59 Comp. Gen. 73 (1979), 79-2 C.P.D. ¶ 314, we found that the exclusion of creosote by the REB was not shown to be unreasonable, largely because of the possibility that creosote-treated poles could bleed

during shipping and thereafter. In addition, AID now states that it was deemed necessary to exclude creosote because of the extreme environmental and electrical conductivity problems posed by the high levels of preservative necessitated by the conditions in Bangladesh. Since Taylor has not submitted any new information which we did not consider in deciding the above case, we find that this issue is without merit. See Niedermeyer-Martin Co., B-203855, July 17, 1981, 81-2 C.P.D. ¶ 48.

Finally, Taylor contends that the requirement that 44 percent of the radius of the poles be penetrated with preservative is outside the accepted standard for treating wood poles as embodied by specification TT-W-571-J. Taylor argues that this specification permits a greater preservative retention level, but does not permit a greater preservative penetration level. Taylor contends that the REB's current requirements are unduly restrictive because, according to Taylor, Douglas fir poles of the sizes specified, treated in accordance with specification TT-W-571-J, but with a higher retention (as permitted under the specification), rather than with a greater penetration, will perform satisfactorily in Bangladesh.

We do not agree with Taylor's contention that specification TT-W-571-J precludes the use of penetration requirements greater than the standard ones listed in the specification. Mr. Robert Pratt, the Director of the Forest Products Laboratory (FPL), the federal agency responsible for drafting the specification, was questioned by AID as to whether an increase in the penetration requirements would be permissible under TT-W-571-J. He responded to AID in a letter dated December 22, 1983, stating that "it is a user's prerogative to specify increased penetration under TT-W-571-J." The Director pointed out that page 35 of the supplement to the specification (entitled Selection, Production, Procurement and use of Preservative-Treated Wood) specifically provides that invitations for bids must specify penetration levels "if other than standard."

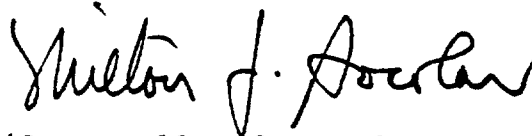
Taylor has not shown that the REB specification is unreasonable. Although Taylor quotes Mr. Lee Gjovik, FPL Wood Preservation Specialist and co-author of the specification supplement, supra, as saying that he sees no reason why Douglas fir treated in accordance with TT-W-571-J would not be adequate for use in Bangladesh, Taylor has not

shown that the penetration levels specified in the REB are unreasonable. When the Director of the FPL was questioned by AID concerning the propriety of the requirement that 44 percent of the radius of the poles be penetrated he replied:

"We assume [that the Bangladesh consultants] based that recommendation on their assessment of service conditions in Bangladesh and their judgment that 90 percent of the original pole strength must be retained should the central core be lost to biodegradation. How much residual strength is required would depend on the conditions of use and is a question that the purchaser and their consultants must answer Whether [the penetration requirement] is discriminatory depends on whether service conditions warrant this depth of penetration. We do not have sufficient data to make this evaluation for Bangladesh."

Since nothing in the record has shown that the REB's penetration requirement is unreasonable, Taylor has not met its burden of proof. Niedermeyer-Martin Co., et al., B-203855.3, et al., supra.

The complaints are denied.


for Comptroller General
of the United States