

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

50909

FILE: B-183378

DATE: July 16, 1975

MATTER OF: Mahoning Construction & Bridge Co., Inc.

97374

DIGEST:

Request for remission of liquidated damages is denied since contracting agency's refusal to recommend remission precludes GAO under 10 U.S.C. 2312 from remitting all or part of such damages.

Mahoning Construction & Bridge Company, Inc. (Mahoning) requests that our Office remit liquidated damages assessed by the Army Corps of Engineers against it under contract No. DACW59-73-C-0131.

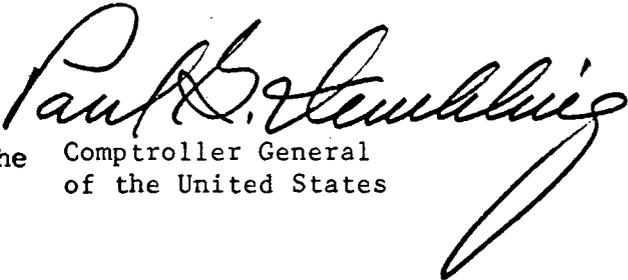
The record shows that Mahoning was awarded the subject contract at a price of \$168,964.65, for the construction of the Hannibal Day Use Area, Hannibal Locks and Dam, Ohio River, on June 26, 1973. The contract provided that work would be completed within 365 calendar days from the receipt of notice to proceed and that liquidated damages of \$80 per day would be assessed in the event of a contract delay. Notice to proceed was given on July 27, 1973, and by contract modification No. 1 the date for completion was extended from July 27 to August 26, 1974. Mahoning did not complete the contract until September 26, 1974, and was assessed \$2,480 in liquidated damages.

Subsequently, the contracting officer found that some additional contract work had resulted from a changed condition. He therefore increased the contract price by \$20,778.61 and extended the completion date from August 26 to September 19, 1974. As a result of these adjustments, the liquidated damages assessment was reduced from \$2,480 to \$560.

Our authority to remit liquidated damages rests solely upon 10 U.S.C. 2312, which provides that upon the recommendation of the head of an agency the Comptroller General may remit all or part, as he considers just and equitable, of any liquidated damages assessed for delay in performing a contract made by the agency. It is apparent from the statute, and it has consistently been our view, that an agency's favorable recommendation for remission is a prerequisite to any action by this Office. Lasko Metal Products, Inc., B-180174, July 24, 1974.

B-183378

Consequently, since the Army has reviewed Mahoning's request and declined to recommend remission, we are unable to grant Mahoning remission of all or any part of the liquidated damages assessed.


For the Comptroller General
of the United States