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DECISION



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

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FILE: B-200552

DATE: March 16, 1982

MATTER OF: Morris Mechanical Enterprises, Inc.

DIGEST:

1. A favorable recommendation by the head of the contracting agency is a prerequisite to GAO consideration of a request for remission of liquidated damages.
2. GAO will not act on matters which are in court during the pendency of litigation because: (1) the litigation may resolve the matter and (2) it is improper to argue the same issue before two forums.

Morris Mechanical Enterprises, Inc. (Morris), by letter of February 24, 1982, requests that our Office authorize the remission of \$23,100 in liquidated damages now held by the General Services Administration (GSA) under GSA contract No. GS-04-B-17001(M).

The Morris request is not accompanied by a GSA recommendation that the damages be remitted. Under 10 U.S.C. § 2312 (1976), our Office is authorized to remit liquidated damages in whole or in part upon the recommendation of the head of the contracting agency. A favorable recommendation is a prerequisite to any remission action. J.K. Prince & Sons, B-190059, September 27, 1977, 77-2 CPD 232.

Moreover, the Department of Justice advises that this matter has recently been tried before the Court of Claims, Morris Mechanical Enterprises, Inc. v. United States, No. 508-80C, and that a decision has not yet been rendered. It is our longstanding rule that we will not act on matters which are in the courts during pendency of litigation because the eventual outcome of the litigation may resolve the matter. 58 Comp. Gen. 282, 286 (1979). In any event, we believe it improper for a firm to argue the same issue before two forums. See Southern Wood Piedmont Company--Reconsideration, B-194380, November 16, 1979, 79-2 CPD 357.

Consequently, we will not consider Morris' request.

Harry R. Van Cleve
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Acting General Counsel