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PRO. LAW I
P. IANNICELLI

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20540

FILE. B-191646 DATE: July 7, 1978
MATTER OF: Turner-Pilkinton Construction Co., Inc.

DIGEST:

Request for remission of liquidated damages assessed by Air Force is denied since Air Force refusal to recommend remission precludes GAO under 10 U.S.C. § 2312 from remitting all or part of such damages.

Turner-Pilkinton Construction Co., Inc., has requested that our Office remit \$2,560 of the \$4,100 in liquidated damages assessed by the Air Force under contract No. F41687-77-90096, awarded by Bergstrom Air Force Base, Texas.

The liquidated damages assessment was imposed by the Air Force on Turner-Pilkinton for its failure to meet the delivery schedule. Turner-Pilkinton requested that the assessment be reduced by our Office because it alleged that its performance under the contract was delayed a total of 32 days due to rain and because there was no provision in the contract for delays due to inclement weather.

In its report of June 8, 1978, the Air Force recommended denial of Turner-Pilkinton's request for partial remission of liquidated damages, because Turner-Pilkinton was performing at the jobsite only 16 days during the 45-day period specified in the contract. In addition, the Air Force stated that the performance period called for in the contract included 15 days for delays anticipated due to inclement weather and that some of the delays claimed by Turner-Pilkinton were for periods of rain after the completion date called for in the contract.

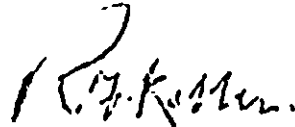
The authority of this Office to remit liquidated damages rests solely upon 10 U.S.C. § 2312 (1976), which provides that upon the recommendation of the head of an agency, the Comptroller General may remit all or part, as he considers just and equitable, of any liquidated damages assessed for delay in performing a contract made by the agency. As is apparent

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from the statute, and as has consistently been our view, an agency's favorable recommendation for remission is a prerequisite to any action by this Office. Lasko Metal Products, Incorporated, B-180174, July 24, 1974, 74-2 CPD 54.

Consequently, we are unable to grant the relief requested.



Deputy Comptroller General
of the United States