

DECISION

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

FILE: B-182706

DATE: June 23, 1975

MATTER OF: Boyertown Auto Body Works

DIGEST:

Request by subcontractor for remission of liquidated damages assessed by agency against its prime contractor is denied, since contracting agency's recommendation against remission precludes GAO, under 41 U.S.C. 256a (1970), from remitting all or any part of such damages.

Boyertown Auto Body Works (Boyertown) requests that this Office remit liquidated damages in the amount of \$134,035.20 which Boyertown paid to AM General Corporation (AM) under the latter's prime contract with the General Services Administration (GSA) (Contract No. GS-00S-08684) for production of one-half ton trucks.

The liquidated damages assessment was imposed by GSA on AM for its failure to meet the delivery schedule. In turn, AM withheld portions of payments, as indemnification, from Boyertown for its delinquency in performance, pursuant to the Purchase Order Agreement between them. On the basis of the record before it, GSA has recommended to this Office against remission of the liquidated damages. In this regard, we note that by letter of June 6, 1974, GSA denied a request by AM to recommend remission.

The authority of this Office to remit liquidated damages rests solely upon 41 U.S.C. § 256a (1970), 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 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. B-175180, May 11, 1972; B-180174, July 24, 1974; B-180566, August 19, 1974.

Accordingly, we must decline to grant the relief requested.

R. J. K...
Acting Comptroller General
of the United States