

DECISION



034-779

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

40971

FILE: B-180174

DATE: July 24, 1974

MATTER OF: Lasko Metal Products,
Incorporated

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

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[Request for]

Lasko Metal Products, Incorporated (Lasko), requests that
our Office remit all or part of liquidated damages in the
amount of \$405,575.55, assessed by the Air Force against
it under contract No. F42600-69-C-3171.

By letter dated April 19, 1971, Lasko requested that the
Air Force recommend that all or a portion of the liquidated
damages be remitted. This request was denied in a letter
dated November 8, 1972, from the contracting officer. On
June 4, 1973, Lasko submitted to the Air Force a request
for reconsideration of the November 8 decision. This re-
quest was denied by letter dated October 23, 1973, from
the contracting officer. By letter dated November 27, 1973,
counsel for Lasko requested that our Office review the
matter since the position of the contracting officer, in
counsel's view, is "arbitrary, capricious, unreasonable,
grossly erroneous, and not supported by substantial evidence."
The Air Force again reviewed the matter in response to our
request and again declined to recommend remission.

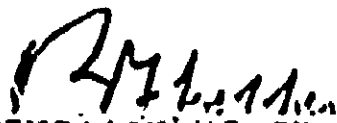
As counsel has recognized, our authority to remit
liquidated damages rests solely upon 10 U.S.C. 2312, which
provides that upon the recommendation of the head of an
agency the Comptroller General may remit all or part, as he
considers just and equitable, of any liquidated damages
assessed for delay in 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 recom-
mendation for remission is a prerequisite to any action by
this Office. B-162643, February 1, 1968; B-175180, May 11,
1972.

BEST DOCUMENT AVAILABLE

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Consequently, we are unable to grant Lasko remission of all or any part of the liquidated damages assessed.


Deputy Comptroller General
of the United States