



Comptroller and Auditor General

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Our Reference JBB 6250

Date 7 November 1991

Dear Mrs Fyfe.

PENALTY CLAUSES - TRIDENT PROGRAMME CONTRACTS

Thank you for your telephone call of 15 October asking whether penalty clauses are contained in the main Trident contracts. You referred to the answer to a Parliamentary Question by Graham Allen MP in July 1987 in which the Minister stated that there were no penalty clauses in the contracts. You may also be interested to see the attached answer to a further Parliamentary Question in June 1989 about penalty costs associated with the Trident programme.

I can confirm that Ministry of Defence contracts do not contain penalty clauses as such because they are inadmissible in English law and therefore impossible to enforce. However, wherever possible the Ministry of Defence endeavour to build into contracts, including those relating to Trident, Liquidated Damages Clauses which are designed to compensate the Ministry for the effects of a delay caused by late delivery or non-delivery. Equally provision is made for a prime contractor to recover incurred expenditure and additional costs arising if the Ministry cancel a contract.

There are many Trident contracts and I am not sure which area you had in mind. But I can certainly confirm that the main contracts for submarines and for building projects at Coulport and Faslane contain Liquidated Damages Clauses. In principle the position is the same for Trident contracts placed in the United States. Most of these contracts are placed on an annual basis by the United States Government to meet both their own requirements and those of the United Kingdom. If the programme or parts of it were cancelled, there would clearly have to be negotiation of liabilities on individual contracts in accordance with the terms of each and the circumstances at the time of cancellation.

I hope you find this information useful.

Yours sincerely,
John Bourn

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