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**DECISION**



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

FILE: B-202046

DATE: August 10, 1981

MATTER OF: Stoner-Caroga Corp. Inc.

**DIGEST:**

GAO will not consider claim for breach of contract since claim is subject to provisions of Contract Disputes Act of 1978 which places jurisdiction in agency Board of Contract Appeals or Court of Claims. Jurisdiction granted by the Act is not limited by obsolete disputes clause in contract which does not reflect Act's provisions.

Stoner-Caroga Corp. Inc. (Stoner-Caroga) protests the actions of the General Services Administration's Surplus Supply Center, National Capital Region (Center), in connection with a contract it was awarded under Invitation for Bids (IFB) No. WDPS-80-219. We decline to consider the matter.

The IFB, issued on July 7, 1980, requested bids on the sale of two mobile homes. On June 22, 1980, the Center accepted Stoner-Caroga's bid of \$456.00. While the record does not clearly establish that the Center sent a notice of award to Stoner-Caroga, neither party disputes the fact. Under the terms of Standard Form 114C-1 (January 1970 ed.), incorporated by reference into the IFB, the mailing of a written award by the Government resulted in a contract.

The notice of award stated that Stoner-Caroga had to remove the mobile homes by August 5, 1980, and that the documents required for release of the property would be forwarded to Stoner-Caroga upon receipt of full payment. Stoner-Caroga wrote a check for \$456.00 on August 27, 1980, and mailed it to the Center. On that same day, the Center awarded a contract for the

[Protest Involving Alleged Breach of Contract]

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sale of the mobile homes to the only other bidder on the IFB, who paid for and removed the property by August 29, 1980. Prior to reawarding the contract, the Center claims it attempted to reach Stoner-Caroga by telephone but was unsuccessful. The Center did not send Stoner-Caroga a notice to cure prior to reawarding the contract.

On or before September 9, 1980, the Center cashed Stoner-Caroga's check. In November, Stoner-Caroga resold the mobile homes to Eastern Crane & Conveyor Company, Inc. (Eastern) for \$5,400 each, receiving a down payment of \$1,000. A short time later, Stoner-Caroga sent a letter to the Center with a photocopy of its canceled check for \$456.00, requesting the appropriate documents for release of the mobile homes to it. On January 8, 1981, Stoner-Caroga again requested the appropriate documents. At this point, a contracting officer at the Center discovered Stoner-Caroga's canceled check. Thereafter, the Center offered to refund \$456.00 to Stoner-Caroga which Stoner-Caroga refused to accept. Finally, Eastern filed suit against Stoner-Caroga on April 7, 1981, for breach of contract.

We decline to consider the matter because it essentially involves an alleged breach of contract which is subject to the Contract Disputes Act of 1978, 41 U.S.C. §§ 601-613 (Supp. III 1979), which applies to all contracts entered into by an executive agency, including those for the disposal of personal property, unless specifically exempted by the act. 41 U.S.C. § 602(a). The act requires that all claims "relating to" a contract be filed with the contracting officer for a decision. 41 U.S.C. § 605(a). In addition, a contractor may appeal an adverse contracting officer decision either to the contracting agency's board of contract appeals or to the United States Court of Claims. 41 U.S.C. §§ 606, 609.

Although the disputes clause in Stoner-Caroga's contract does not reflect the provisions of the act, it has been held that the jurisdiction granted by the act is not limited by use of an obsolete disputes clause, see Pleasant Logging & Milling Co., Inc., AGBCA No. 79-172 CDA, 80-1 BCA 14,290 (February 20, 1980), because that clause cannot operate to modify a statute. We agree. Since the contract involved is subject to the act, the breach claim is appropriate for resolution under that act rather than by our Office. We therefore decline to consider the claim.

*F. H. Barclay*  
For Harry R. Van Cleve  
Acting General Counsel