

SABBIA CORPORATION**CONTRACT NO. V578P-1641****VABCA-5557 & 5857****VA MEDICAL CENTER
HINES, ILLINOIS**

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**OPINION BY ADMINISTRATIVE JUDGE McMICHAEL
On Government's Motion to Dismiss**

Sabbia Corporation (Sabbia or Contractor) appeals the "individual actions and the collective actions" of the Department of Veterans Affairs (VA or Government), and as set forth in its Complaint asks this Board to: 1) declare the actions and inaction of VA to be violative of the Contract; 2) order VA to complete its obligations under the Contract for three additional years; 3) declare that the Contract is expanded and modified to include all VA facilities covered by the VA Great Lakes Health Care System Acquisition Center, Milwaukee, Wisconsin, for a period of four years; and 4) order VA to appoint a new contracting officer and complete its obligations under the expanded Contract for the additional four years.

The Government has filed a Motion to Dismiss asserting that the Board lacks jurisdiction because the November 9, 1997 letter, which Sabbia relies on as its claim, was not a valid claim; and further, that the Board lacks authority to grant Sabbia's requests for specific performance. Both points are contested by Appellant in its Response to the Motion to Dismiss.

The Record for purposes of our consideration of the Motion to Dismiss consists of the pleadings; the Appeal File (R4, tabs 1-226); the Government's Affidavits of Thomas J. Scheuerell and Harlan Rochon; and Attachments A and B to Appellant's Response to the Motion to Dismiss. In reviewing the Record to consider the Government's Motion, we discovered that this Appeal contained two separate and distinct causes of action, one based on the express Contract and a second based on an alleged implied-in-fact contract which the Appellant argues is currently in place. Accordingly, under the authority of *Placeway Construction Corporation v. United States*, 920 F.2d 903 (Fed. Cir. 1990), we separated out of VABCA-5557 the matter concerning whether there is an implied-in-fact contract, and assigned it a new docket number, VABCA-5857. The facts for purposes of the Motion to Dismiss are as follows.

FINDINGS OF FACT

On September 28, 1995, the Contract was negotiated between the VA, the Small Business Administration (SBA) and the designated Contractor, Sabbia Corporation, under the "8(a)" program. Contract No. V578P-6141 was awarded to "furnish labor,

supervision, materials, tools, equipment and supplies to prepare existing surfaces for painting; and then apply paint to those surfaces as specified," at the Edward Hines Jr. VA Medical Center. (R4, tab 22) The Contract term was for one base year with up to three one-year option periods. In addition, the Contract had a maximum annual dollar value of \$250,000 and each task order had a maximum dollar value of \$25,000. (R4, tab 22, Section C) During the base year of the Contract, Sabbia was issued task orders for painting projects and performed the work in a satisfactory manner. On September 30, 1996, the Contracting Officer exercised the first option year of the Contract. (R4, tab 107)

In February 1997, the Contract was transferred to the VA's Great Lakes Health Care System Acquisition Center (GLAC), a centralized contracting activity located in Milwaukee, Wisconsin, which was created when certain VA facilities were consolidated and formed Veterans Integrated Service Network (VISN) 12, Great Lakes Health Care System. Thomas J. Scheuerell became the Contracting Officer. (R4, tab 205) Throughout March, April and May 1997, VA continued issuing task orders under the Contract. (R4, tabs 143 (Task Order No. 4), 144 (Task Order No. 5), 150 (Task Order No. 6), 160 (Task Order No. 7))

In early March of 1997, Sabbia requested that the Contract be expanded to add other VA medical centers (VAMCs) serviced by the GLAC: VAMC Westside, VAMC Lakeside, and VAMC North Chicago. (R4, tabs 146 and 151) In response to this request, the Contracting Officer reviewed the Contract to determine whether a modification was appropriate. During this review, around April 21, 1997, the Contracting Officer discovered what he considered to be problems with the Contract, the principal being that the Contract was incorrectly written as a service contract and prior year funds were improperly being used to fund current year projects. (R4, tabs 156) Ultimately, on May 15, 1997, Contracting Officer Scheuerell decided that because of those problems, and because expanding the facilities covered would be "beyond the scope of the Contract," the Contract should not be modified and expanded. He went on to decide that "we were not going to issue any further task orders on the open-end contracts," and directed the Chief of Engineering Service, Terrance Wright, to stop issuing task orders. (R4, tab 163)

The Record is unclear as to how or when Contracting Officer Scheuerell's decision was communicated to Sabbia but, on June 3, 1997, Christine Sabbia wrote the Contracting Officer, "[i]n regard to your breach of contract" Sabbia wanted to "set up a meeting." (R4, tab 165) Sabbia also attached a letter from their attorney regarding prior correspondence Sabbia had with Scott F. Denniston, Director of VA's Office of Small and Disadvantaged Business Utilization. Throughout the ensuing period Sabbia wrote numerous letters to various individuals and entities complaining generally of improper actions on the part of the Contracting Officer and other VA officials. In their letters Sabbia alleged, *inter alia*, breach of contract, bad faith, retaliatory actions, threats, discrimination, federal code violations, and *Anti-Deficiency Act* violations. (R4, tabs 167, 182-85, 192, 193, 195, 196, 200, 202, 206 and 208) The Contracting Officer often received copies of these letters. (Government Motion, ¶ 4) None of these letters set forth a request for an equitable adjustment or a monetary claim.

On September 15, 1997, Sabbia filed Civil Action No. 97C 6497 in United States District Court, Northern District of Illinois, naming the VA, GLAC Manager Dean

Martell, and Contracting Officer Scheuerell as defendants in an action arising "under an implied contract for compensation for property taken by the United States for public use." (R4, tab 211, ¶ 3) Count I of Sabbia's Complaint set forth an "Action for Specific Performance of the Contract," Count II an "Action for Specific Performance of Implied Contract," and Count III an "Action for Injunctive Relief." (R4, tab 211)

Among other things, Sabbia's District Court complaint alleged that on March 7, 1997, subsequent to exercising the first option year of the Contract, the Appellant met with Contracting Officer Scheuerell to discuss the progress of the work. At that meeting, according to Sabbia, Scheuerell made representations regarding the continued vitality of the Contract, and "expressed and gave every assurance that the VA would expand the Plaintiff's current contract to include three additional VA facilities," specifically, the VAMC's at Lakeside, Westside and North Chicago. Sabbia averred that "[b]y virtue of those assurances, Scheuerell induced the Plaintiff to confirm prices for the expansion of the current contract to include the four additional VA facilities," and that "[t]he Plaintiff confirmed its prices, at a sizeable discount, to the VA as a result of those negotiations with Scheuerell at the March 7, 1997 meeting." (R4, tab 211, ¶¶ 7-12) Whereupon, Sabbia asserted that Contracting Officer Scheuerell "unilaterally, arbitrarily and without warning" discontinued issuing task orders for work at Hines, Illinois or any of the facilities in the Plaintiff's expanded contract. (R4, tab 211, ¶ 15) Sabbia also alleged that the VA attempted to issue task orders within the scope of the Contract to another contractor. (R4, tab 211, ¶ 14)

Sabbia asked the District Court to:

Order the Government to complete its obligations under the current Contract;

Extend the Contract for an additional four years;

Declare that the extended Contract existed between Sabbia and VA that included four additional VA facilities;

Declare VA to be in violation of Sabbia's rights under the current and extended Contract;

Order VA to complete its obligations under the current and extended Contract; and

Grant other and further relief as it may deem proper.

(R4, tab 211)

The District Court complaint did not set forth a request for monetary damages. On October 3, 1997, the above action in Federal District Court was dismissed without prejudice. (Government Motion, ¶ 12)

The Government asserts that the Contract expired on September 27, 1997, without VA exercising the next option year. (Government Motion, ¶ 11)

On November 9, 1997, Sabbia wrote to Contracting Officer Scheuerell and GLAC Manager Martell:

Pursuant to the Contract Disputes Clause of the above-named contract, I am hereby formally disputing your individual actions and the collective actions of your Agency *according to the contents of our letters and lawsuit* dated since on or about May 1, 1997.

My attorney has advised me that I must exhaust all administrative remedies before I can file a lawsuit (AGAIN) for your *breach of contract, bad faith, and all other reasons set forth in our letters against the VA in the Court of Claims.*

(R4, tab 214) (emphasis added)

On November 19, 1997, Contracting Officer Scheuerell responded:

Your letter dated November 9, 1997 disputing actions that the VA and myself have taken on the above referenced contract does not qualify as a claim under the Federal Acquisition Regulation (FAR) 52.233-1, Disputes. According to the "Disputes" clause as indicated on page 34 of the contract you must identify the specific issue in dispute and what relief you are seeking in order for it to be considered a claim and allow me to render a decision.

(R4, tab 215)

Sabbia's appeal dated April 4, 1998, from the Contracting Officer's failure to issue a final decision, was received and docketed by the Board on April 10, 1998, and assigned docket number VABCA-5557. In the appeal letter, which Sabbia indicated that it wanted to serve as its Complaint, the Appellant sought the following remedies:

1. That the VA Board of Contract Appeals declare the actions and inactions of Scheuerell, *et al*, to be violative of Sabbia's rights under its contract with the VA;
2. That Scheuerell and the VA be ordered to complete its obligations under the Hines contract for the additional three years remaining;
3. That it be declared that a modified and expanded contract exists, which includes all four regional VA facilities covered by the Contract Service Center in Milwaukee for a period of four years, at the discounted

price accepted by Mr. Scheuerell; and

4. That the VA be ordered to complete its obligations under the expanded contract for the additional four years, and appoint a different contracting officer.

In its Motion to Dismiss, the VA attached the sworn Affidavit of Thomas J. Scheuerell dated June 25, 1998, in which Contracting Officer Scheuerell states "I have reviewed the allegations and relief requested in [sic] Sabbia's appeal letter . . . [t]he allegations and relief requested in that appeal letter were never presented to me as a claim under the *Contract Disputes Act*, and I have never received a request for a final decision on the allegations and relief requested in that appeal letter." Subsequent to the filing of the Motion, the VA also submitted the sworn Affidavit of Harlan Rochon, Acting Manager of the GLAC, dated August 18, 1998, who under oath states, in pertinent part:

2. I have reviewed the GLAC Contract Register . . . in order to identify all of the painting contracts and/or painting task orders, awarded or issued to contractors, by or on behalf of the [VAMC] Hines, since 10/1/96. For purposes of this search, contracts that included painting incidental to construction and/or renovation projects were not considered to be painting contracts.

3. Since 10/1/96, under Contract Number V578P-1641, seven (7) task orders for painting were issued to Sabbia Roofing, Inc. [subsequently d/b/a Sabbia], aggregating to a total dollar amount of \$100,959.27.

4. On August 25, 1997, Contract Number V69DC-70 was awarded to Sabbia using the procedures in section 8(a) of the *Small Business Act*. This was a contract to paint the "F" corridor at the Edward Hines VA Hospital for a total dollar amount of \$18,192.82.

5. I have found no painting contracts or painting task orders other than those noted in paragraphs 3 and 4 above, awarded or issued to contractors, by or on behalf of the Edward Hines VA Hospital, from 10/1/96 to 8/18/98.

DISCUSSION

In moving to dismiss, the Government initially contends that we lack jurisdiction over these appeals because Sabbia did not submit a valid claim to the Contracting Officer. The *Contact Disputes Act of 1978*, 41 U.S.C. §§ 601-13 (*CDA*), provides the statutory framework for, and the bases of, this Board's jurisdiction over claims made by the Contractor against the Government. Specifically, section 605(a) provides that "[a]ll claims by a contractor against the government relating to a contract shall be in writing and shall be submitted to the contracting officer for a decision." The Federal Acquisition

Regulation (FAR) 52.233-1 (c) provides further guidance by stating, in pertinent part that:

Claim, as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract.

From the above definition, three requirements have emerged from the United States Court of Appeals for the Federal Circuit that contractors must satisfy in order to establish Court of Federal Claims' or the Boards' jurisdiction over a *CDA* monetary claim:

- 1) the contractor must submit the demand in writing to the contracting officer;
- 2) the contractor must submit the demand as a matter of right; and
- 3) the demand must include a sum certain.

H. L. Smith v. Dalton, 49 F.3d 1563 (Fed. Cir. 1995) *citing Essex Electro Engineers, Inc.*, 960 F.2d 1576 (Fed. Cir. 1992). "A contractor must submit in writing 'a clear and unequivocal statement that gives the contracting officer adequate notice of the basis and amount of the claim.'" *Id. citing Contract Cleaning Maintenance, Inc. v. United States*, 811 F.2d 586, 592 (Fed. Cir. 1987). The aforementioned requirements are not mere "technicalities" as characterized by the Appellant, but rather, constitute the very basis of our jurisdiction.

We apply a "common sense analysis, to determine whether . . . the contractor asserted in writing and with sufficient specificity a right to additional compensation." *Transamerica Insurance Corp. v. United States*, 973 F.2d 1572, 1579 (Fed. Cir. 1992). The request for a contracting officer's decision need not be explicit, "as long as what the contractor desires by its submissions is a final decision." *Id.* at 1576. The issue, therefore, is whether Appellant's November 9, 1997, letter, the District Court complaint, and other documents in the Record, meet the strictures required to constitute proper "claims" under the *CDA*. While acknowledging that a series of letters can be read together to constitute a claim, the Government avers that Sabbia's letters "do not give the Contracting Officer a clear and unequivocal statement of the basis of the claim."

The November 9 letter notified the Contracting Officer that:

Pursuant to the Contract Disputes Clause of the above-named contract, I am hereby formally disputing your individual actions and the collective actions of your Agency according to the contents of our letters and lawsuit dated since on or about May 1, 1997 My attorney has advised me that I must exhaust all administrative remedies before I can file a lawsuit

(AGAIN) for your breach of contract, bad faith, and all other reasons set forth in our letters against the VA in the Court of Claims.

This letter certainly indicates a desire on Sabbia's part to initiate the administrative review process and we note that a request for a contracting officer's decision "can be implied from the context of the submission." *Heyl & Patterson, Inc. v. O'Keefe*, 986 F.2d 480, 483 (Fed. Cir. 1993).

Regarding the Government's argument that Sabbia failed to submit a valid claim to the Contracting Officer, the Federal Circuit in *Reflectone, Inc. v. Dalton*, 60 F.3d 1572 (Fed. Cir. 1995) (en banc) and its progeny have severely limited contracting officers' capabilities to assert "lack of specificity" and "lack of supporting documentation as to basis and amounts," as valid grounds for refusing to issue a final decision. "The law does not require an explicit demand or request for a contracting officer's decision; as long as what the contractor desires by its submissions is a final decision, [that] prong of the CDA claim test is met." *James M. Ellett Construction Company, Inc. v. United States*, 93 F.3d 1537, 1546 (Fed. Cir. 1996); *Bill Strong Enterprises, Inc. v. Shannon*, 49 F.3d 1541 (Fed. Cir. 1995). As we stated in *Bridgewater Construction Corp.*, VABCA No. 2866, 90-2 BCA ¶ 22,764 at 154,911, we read the decisions of the Federal Circuit as

requiring nothing more than that the claim satisfy the requirements of notice pleading. A contracting officer may demand more in order to grant an equitable adjustment but he must issue a final decision in sixty days after receipt of a claim containing an amount in a sum certain, for which notice of the basis is given, and for which a decision is requested.

Sabbia in its District Court complaint requested that:

the Government be ordered to complete its obligations under the current Contract;

the Contract between Sabbia and VA, be declared extended for an additional four years and expanded to include four additional VA facilities;

the VA be declared in violation of Sabbia's rights under the current and extended Contract; and

other and further relief as it may deem proper.

We also reviewed Appellant's many letters to the VA. We find these letters to contain disjointed, speculative, conclusory grievances and general allegations of wrongdoing on the part of VA contracting officials, all of which are of dubious relevance to any issue over which the Board might have jurisdiction. While Sabbia spent a great deal of effort lobbying for expansion of the Contract with Congressional and other VA administrative

officials, none of this correspondence amounted to a cognizable *CDA* claim. We thus focus our attention on the Contractor's November 9 letter to the Contracting Officer and the complaint in its District Court suit.

Our review of the November 9th letter and District Court complaint indicates that the initial source of Sabbia's discontent was the VA's alleged breach of the original express Contract (extended into the first option year) and its failure to issue task orders under that Contract. The Appellant asks us to acknowledge that the express Contract was breached when VA failed to issue task orders to Sabbia. Next, the Contractor asks us to find that an implied-in-fact contract existed between the parties, that was an expanded and extended version of the original express Contract, which was also breached by the VA. Sabbia seeks injunctive relief and asks us to direct the VA to issue task orders under the alleged contract.

Accordingly, we address the scope of our jurisdiction regarding two issues. First, whether this Board has jurisdiction over the alleged breach and relief requested under the express Contract. Second, we examine whether this Board has jurisdiction to determine whether an implied-in-fact contract exists between the parties, whether that contract has been breached, and if so, whether we can direct specific performance or issue injunctive relief on that contract.

VABCA-5557, The Express Contract.

While inartfully articulated, Sabbia, in its November 9th letter and District Court complaint, alleges that the Government breached the original express Contract (extended into the first option year) by its failure to issue task orders under that Contract, and by its alleged attempts to issue painting task orders to other contractors. When read together, the November 9th letter and District Court complaint meet the first two jurisdictional requisites of a *CDA* claim, in that they constitute a demand to the Contracting Officer as a matter of right. However, on the whole, it is also clear that while the Appellant is asking this Board find a breach of the original express Contract and to provide specific performance and injunctive relief, Sabbia has never sought monetary damages for the Contracting Officer's alleged failure to issue task orders. For all its submissions Sabbia never asserted monetary damages as a result of the alleged breach of the original express Contract which had expired a month previous. Applying the standards articulated in *H. L. Smith v. Dalton*, the Appellant's submission, while meeting the first two prongs of the jurisdictional test, fails the third test that necessitates a demand for a sum certain and thus does not trigger the need for a contracting officer's final decision.

As discussed later in this Opinion, we lack authority to grant Sabbia's request for specific performance and injunctive relief, although it should be noted that the matter was in any event rendered moot when the express Contract expired on September 27, 1997, prior to Sabbia's demand on the Contracting Officer and appeal to our Board. Based on the foregoing, the Government's Motion to Dismiss in VABCA-5557, is Granted.

This dismissal is without prejudice to the submission of a claim that meets the requirements of the *Contract Disputes Act*. To invoke this Board's jurisdiction on the express Contract under the *CDA*, Sabbia should first submit to the Contracting Officer a

proper claim containing "a clear and unequivocal statement that gives the contracting officer adequate notice of the *basis and amount* of the claim." Once a sufficient claim is submitted to the Contracting Officer, 41 U.S.C. § 605 allows the Contracting Officer sixty days (or a "reasonable time" for claims in excess of \$100,000) to issue a decision on the claim. In the absence of a decision or the expiration of the time within which a decision must be issued, the Contractor's claim is not ripe for adjudication and the Board does not have jurisdiction over the claim. Following an adverse final decision (or the Contracting Officer's failure to issue a final decision within the statutorily mandated time period outlined above), the Contractor may appeal directly to this Board or to the Court of Federal Claims.

Contractors are cautioned that merely meeting the *minimal* requisites of submitting a demand for a sum certain as a matter of right to the Contracting Officer, may kindle a Contracting Officer's decision to simply *deny* a potentially valid claim for lack of information. As the Federal Circuit stated in *H.L. Smith*:

The *CDA* envisions cooperation between the contracting officer and the contractor. It intends to facilitate resolution of contract disputes rather than litigation. Contracting officers rightly expect cooperation. When [the contractor] failed to respond to the contracting officer's requests for information and appealed directly to the Board [the contractor] simply delayed action on its claims.

49 F.3d at 1565. In the event it elects to submit a monetary claim containing a sum certain to the Contracting Officer, Sabbia would be well advised to clarify and elaborate on the bases of its claim.

VABCA-5857, The Alleged Implied-in-Fact Contract.

It is apparent from the November 9th letter and District Court complaint that a portion of the Appellant's cause of action is predicated on the existence of an implied-in-fact contract with the Government, that extended and expanded the terms of the previous Contract. To date, the Government has never explicitly responded to this assertion. Under Section 3(a) of the *CDA*, among other things, the Board has jurisdiction over implied contracts for the procurement of services and construction, alterations, repair or maintenance of real property. 41 USC § 602; *Coastal Corporation v. United States*, 713 F.2d 728 (Fed. Cir. 1983); *Commercial Sound and Safety, Inc.*, VABCA No. 3750, 93-1 BCA ¶ 25,498; *Schoenfeld Associates, Inc.*, VABCA No. 2184, 87-1 BCA ¶ 19,648. We conclude, based on the foregoing, that Sabbia, in its November 9th letter and District Court complaint, minimally met the jurisdictional requisites to establish our jurisdiction to determine whether an implied-in-fact contract was formed. Nevertheless, we note that our exercise of jurisdiction over nonmonetary contract interpretation claims is generally discretionary.

This Board has consistently held that it has the authority to issue declaratory judgments on matters of contract interpretation, but that it will decline to do so except in cases in which "it is clear that the dispute over an interpretation has reached the point

where one or the other of the parties to the contract has been required to alter its contractual position or method of performance and will likely incur costs in the foreseeable future." *Smith's, Inc. of Dothan*, VABCA No. 2198, 85-2 BCA ¶ 18,133.

In *George Hyman Construction Co.*, VABCA No. 3677, 93-2 BCA ¶ 25,823 at 154,217, we discussed our authority to consider non-monetary claims in the context of *Smith's, Inc. of Dothan*, where we noted that, with the exception of appeals from default terminations, our exercise of such jurisdiction must be discretionary for reasons of judicial economy. We said that we would assume such jurisdiction only where we are convinced that the equities of a particular situation compel such an outcome. In doing so we look to the provisions of the *Declaratory Judgment Act*, 28 U.S.C. § 2201, "for guidance in the exercise of our discretion in this regard." We also noted that the rationale for a requested advisory opinion must be "of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Smith's of Dothan* at 91,018 citing *Maryland Casualty Co. v. Pacific Coal and Oil Co.*, 312 U.S. 270 (1941).

The decision in *McDonnell Douglas Corp.*, ASBCA No 26747, 83-1 BCA ¶ 16,377, *aff'd in part and rev'd in part, sub nom., McDonnell Douglas Corp. v. United States*, 754 F.2d 365 (Fed. Cir. 1985), provides long-standing precedent for the proposition that Boards have jurisdiction to determine the rights and obligations of the parties under a contract even though no monetary relief is sought. *Philomath Timber Co.*, IBCA-2409, 89-1 BCA ¶ 21,418; *Systron Donner, Inertial Division*, ASBCA No. 31148, 87-3 BCA ¶ 20,066; *General Electric Automated Systems Division*, ASBCA No. 36214, 89-1 BCA ¶ 21,195; *Robert J. DiDomenico*, GSBCA No. 5539, 80-1 BCA ¶ 14,412; *Smith's Inc. of Dothan*, VABCA No. 2198, 85-2 BCA ¶ 18,133.

Unlike the already completed express Contract, if an implied-in-fact contract exists between the parties, the terms of that contract are still operative and damages could accrue as a result of any painting contracts issued by the Contracting Officer during its life. Given the uncertainty engendered by the possibility of an enforceable implied-in-fact contract and the consequences of breach by the Government we elect to retain jurisdiction to decide whether such a contract exists, notwithstanding the absence of a monetary claim. In doing so, however, we are constrained to observe that in viewing the facts contained in the Rule 4 File and affidavits that currently constitute the record--as opposed to the conclusions asserted by the Appellant in its District Court pleadings--it appears that this Appeal might well lend itself to a summary disposition.

As for Sabbia's request for specific performance and injunctive relief we lack the remedial authority to order such relief. Our CDA jurisdiction has certain limitations. Boards of Contract Appeals are not empowered to grant equitable relief to those challenging agency acquisition decisions. See *Fil-Coil Co.*, ASBCA No. 27216, 82-2 BCA ¶ 16,125. Nor are in a position to "order" a contracting officer to award task orders. *Dixon Pest Control, Inc.*, ASBCA No. 41042, 91-1 BCA ¶ 23,640; *Maria Manges*, ASBCA No. 25350, 81-2 BCA ¶ 15,398 (Board may not grant relief in the nature of mandamus). To the extent such remedies are sought, this Board lacks jurisdiction.

Based on the foregoing, the Government's Motion to Dismiss for lack of jurisdiction in VABCA-5857, is Denied as to the issues of whether an implied-in-fact contract existed between the parties and whether the Government breached that contract.

DECISION

For the foregoing reasons the Government's Motion to Dismiss in VABCA-5557, is **Granted** and the Appeal of Sabbia Corporation, under Contract No. V578P-1641, is hereby **Dismissed** for lack of jurisdiction pursuant to Board Rule 5. The Government's Motion to Dismiss in VABCA-5857, is **Denied**, and the Board retains jurisdiction to consider and decide Sabbia Corporation's claim that an implied-in-fact contract exists concerning current painting requirements in the Great Lakes Health Care System.

Date: **December 17, 1998**

Guy H. McMichael III
Chief Administrative Judge
Panel Chairman

We Concur:

James K. Robinson
Administrative Judge

Richard W. Krempasky
Administrative Judge