

SUPERIOR CLEANING SERVICE,)	AGBCA No. 98-163-1
)	
Appellant)	
)	
Representing the Appellant:)	
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)	
Representing the Government:)	
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RULING OF THE BOARD OF CONTRACT APPEALS

February 2, 1999

_____ OPINION BY ADMINISTRATIVE JUDGE ANNE W. WESTBROOK

This appeal arose under a 1985 contract for janitorial services between Superior Cleaning Service of Bloomfield, Missouri (Appellant), and the Agricultural Stabilization and Conservation Service (now Farm Service Agency). The contract was for a period of 1 year and neither party has retained a copy of the contract. It is undisputed that the contract provided for payment of \$450 per month for cleaning office building space at the Keasler Building, Highway 25, North, Bloomfield, Missouri. The record also indicates that when the contract expired the parties failed to enter into a new contract. Nonetheless, Appellant continued to perform and the Government continued to make payment at the same rate.

By letter dated and received November 12, 1997, Beverly Frymire, the individual who performed the services for Appellant wrote the Government. She stated that she had attempted unsuccessfully “over the years” to renegotiate the contract. Having failed, she considered herself a Government employee entitled to the salary and benefits of an employee. By letter and invoice dated March 9, 1998, she submitted a bill for \$33,160 for “cleaning services balance due.” The Government denied

the request by a written decision dated March 24, 1998. In a letter dated March 30, 1998, Appellant addressed an appeal to “the Board of Contract Appeals” and apparently sent it to the General Services Administration Board of Contract Appeals. Upon redirection to and receipt at the Agriculture Board of Contract Appeals, the appeal was docketed. Pleadings were filed and the parties submitted appeal files. Thereafter, the Government filed a Motion to Dismiss and Memorandum in Support of the Motion to Dismiss. The Government argued that the Board lacks jurisdiction to hear the appeal because no contract existed after July 1, 1986. For the Board to have jurisdiction, Appellant would have to show the existence of an implied-in-fact contract. The Government contended none existed. By submission served December 14, 1998, Appellant expressed its agreement that the Motion is well taken and its desire to voluntarily dismiss its appeal without prejudice.

RULING

The Government has moved for dismissal. The Appellant has expressed its agreement to a dismissal without prejudice. The Board, therefore, dismisses the appeal without prejudice pursuant to Rule 30. Either party may move for reinstatement within 60 days. In the event neither party moves for reinstatement within that period, the dismissal will become with prejudice.

ANNE W. WESTBROOK
Administrative Judge

Concurring:

EDWARD HOURY
Administrative Judge

HOWARD A. POLLACK
Administrative Judge

Issued at Washington, D.C.
February 2, 1999