

“It is axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction.” *United States v. Mitchell*, 463 U.S. 206, 212 (1983). Such consent may not be implied, but must be “unequivocally expressed.” *United States v. Nordic Village, Inc.*, 503 U.S. 30, 33-34 (1992). Under the so-called Tucker Act, the Court of Federal Claims has exclusive jurisdiction over a claim based on an express or implied contract with the United States exceeding \$10,000. 28 U.S.C. § 1491(a). “[T]he [Tucker] Act has long been construed as waiving sovereign immunity only for claims seeking damages, and not for those seeking equitable relief (except in very limited circumstances [not presented here]).” *Transohio Sav. Bank v. Director, Office of Thrift Supervision*, 967 F.2d 598, 608 (D.C. Cir. 1992) (internal quotation marks and citations omitted). Although Congress has waived sovereign immunity under the Administrative Procedure Act (“APA”), 5 U.S.C. § 702, “for suits seeking relief other than money damages from federal agencies or officials[,]” *id.* at 607, it has not waived immunity “for contract actions against the government,” *id.* at 609. The Court therefore lacks jurisdiction under the APA to entertain plaintiff’s claim for specific performance of the alleged contract.

Because plaintiff’s recourse lies exclusively in the Court of Federal Claims for money damages, the Court grants defendant’s motion to dismiss for lack of subject matter jurisdiction. A separate Order accompanies this Memorandum Opinion.

/s/

ELLEN SEGAL HUVELLE
United States District Judge

Dated: September 22, 2009