

<b>JACK WHISLER, INC.,</b>	)	<b>AGBCA No. 99-163-1</b>
	)	
Appellant	)	
	)	
<b>Representing the Appellant:</b>	)	
	)	
Paul B. Choman	)	
President	)	
946 Hawkins Boulevard	)	
El Paso, Texas 79915	)	
	)	
<b>Representing the Government:</b>	)	
	)	
Patricia Leigh Disert	)	
Office of the General Counsel	)	
U. S. Department of Agriculture	)	
Federal Building, Room 4017	)	
517 Gold Avenue, S.W.	)	
Albuquerque, New Mexico 87102-0079	)	

**DECISION OF THE BOARD OF CONTRACT APPEALS**

December 2, 1999

**Before HOURY, POLLACK, and VERGILIO, Administrative Judges.**

**Opinion for the Board by Administrative Judge VERGILIO.**

VERGILIO, Administrative Judge.

On May 4, 1999, Jack Whisler, Inc. of El Paso, Texas (contractor) filed this appeal with the Board involving the respondent, the U. S. Department of Agriculture, Forest Service (Government). The dispute involves a contract, No. 50-7512-7-01, for the Sitting Bull Falls Phase II project in Lincoln National Forest, New Mexico. By decision dated December 28, 1998, the contracting officer denied a contractor claim for a time extension due to adverse weather, asserted the Government's entitlement to actual damages, and issued a contract modification which added, deleted, and modified contract work, with a net decrease in the contract price of \$263.

The contractor maintains that the Board has jurisdiction over this appeal pursuant to the Contract Disputes Act of 1978 (CDA), 41 U.S.C. §§ 601-613, as amended.

During a telephone conference with the parties on May 27, 1999, discussion focused upon the untimeliness of the appeal. The contractor maintained that it would demonstrate that it filed the appeal within 90 days of its receipt of the contracting officer's decision. The Government proffered that it could provide affidavits to the contrary. The parties agreed to explore the facts relevant to the Board's jurisdiction and the issues of the appeal.

In an order issued on November 18, 1999, the Board specified that the contractor has not made itself available to Government counsel to discuss the case or to the Board to arrange for a telephone conference to discuss the status of the case. The Board directed the contractor to contact the Board no later than 2:00 p.m. (eastern time), Wednesday, November 24, 1999, and to provide times of availability for a telephone conference with the Board and Government. Further, the Board directed the contractor to provide the Board and Government with its current telephone and facsimile numbers. Additionally, the Board specified that absent a response, pursuant to Rule 31, based upon the contractor's failure to prosecute the appeal, the Board intends to dismiss this appeal with prejudice on or after Monday, November 29, 1999. Without a valid reason for delay, the contractor has failed to respond timely to the order.

**DECISION**

Accordingly, to the extent that the appeal is properly before the Board, the Board dismisses the matter with prejudice.

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**JOSEPH A. VERGILIO**  
Administrative Judge

We concur:

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**EDWARD HOURY**  
Administrative Judge

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**HOWARD A. POLLACK**  
Administrative Judge

**Issued at Washington, D.C**  
**December 2, 1999**