



INTERIOR BOARD OF INDIAN APPEALS

Delaware Tribe of Western Oklahoma v. Acting Anadarko Area Director, Bureau of Indian  
Affairs

18 IBIA 98 (12/27/1989)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

DELAWARE TRIBE OF WESTERN OKLAHOMA

v.

ACTING ANADARKO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-68-A

Decided December 27, 1989

Appeal from a decision denying a fiscal year 1989 Core Management grant application.

Vacated and remanded.

1. Administrative Procedure: Administrative Record--Indians: Financial Matters: Financial Assistance

When the administrative record fails to demonstrate that an applicant was clearly advised of the necessity to provide particular information in a grant application, and the applicant's failure to provide that information could have affected the decision on whether to approve the application, a decision denying the application will be vacated and the matter remanded for development of an adequate record and issuance of a new decision.

APPEARANCES: Arthur L. Thomas, President, Delaware Tribe of Western Oklahoma, pro se.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Delaware Tribe of Western Oklahoma seeks review of a February 9, 1989, decision of the Acting Anadarko Area Director, Bureau of Indian Affairs (BIA; appellee 1/), concerning the denial of appellant's fiscal year 1989 Core Management grant application. For the reasons discussed below, the Board of Indian Appeals (Board) vacates that decision and remands this matter to BIA.

### Background

By letter dated December 28, 1988, appellant submitted to the Superintendent, Anadarko Agency, BIA (Superintendent), an application for Core Management grant funds for the period July 1, 1989, through June 30, 1990. The application was reviewed at the Agency level, where it was given a composite score of 75, and was transmitted to appellee on January 10, 1989, with the recommendation that it be approved.

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1/ The term appellee is used for both the Acting Area Director and the Area Director.

The application was further reviewed at the Area Office level. On the basis of the Area Office's review, the application was given a composite score of 68. This score was averaged with the score of 75 given by the Agency to arrive at a final score of 71.5. By letter dated February 9, 1989, appellee informed appellant that its application was not selected for funding. The letter states at page 1: "A total of fifteen (15) applications were submitted for a total funding request of \$795,511. The area funding amount for FY-89 Core Management was \$280,000. Six (6) area tribes were funded at approximately 80% of the funding level requested. Although all applications submitted were basically sound, adequate funding was not available."

Appellant appealed from this decision. Appellee forwarded the appeal to the Deputy to the Assistant Secretary - Indian Affairs (Tribal Services) by memorandum dated June 15, 1989. Included with the appeal was a statement from appellee responding to the points raised in appellant's notice of appeal.

New appeal regulations for BIA and the Board took effect on March 13, 1989. See 54 FR 6478 and 6483 (Feb. 10, 1989). Because this appeal was filed after March 13, 1989, by memorandum dated June 20, 1989, it was referred to the Board for consideration under the new procedures. Because it did not appear that a copy of appellee's response to appellant's notice of appeal was sent to appellant, the Board requested that appellee furnish appellant with a copy of that document. Appellant filed a reply to appellee's response.

#### Discussion and Conclusions

Core Management grants are offered by BIA under authority of 25 U.S.C. § 13 (1982); regulations found in 25 CFR Part 278, Subpart C; and Office of Management and Budget (OMB) Circular A-102 (Revised) (circular), which is referenced in 25 CFR 278.24(a). 2/ The primary purpose of these grants, as

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2/ As revised in 1981, the circular "promulgates standards for establishing consistency and uniformity among Federal agencies in the administration of grants to State, local, and federally recognized Indian tribal governments" (circular at 1). The circular specifically provides that it "appl[ies] to all Federal agencies responsible for administering programs that involve grants to State and local governments and federally recognized Indian tribal governments" (circular at 4). The circular establishes standards for cash depositories, bonding and insurance, retention and custodial requirements for records, waiver of "single" State agency requirements, program income, matching share, standards for grantee financial management systems, financial reporting requirements, monitoring and reporting program performance, grant payment requirements, budget revision procedures, grant closeout procedures, standard forms for applying for Federal assistance, property management standards, and procurement standards.

set forth in 25 CFR 278.21, is to supplement the resources of small tribes in order to enable them to provide for basic, or core, tribal management needs.

Appellant first argues that the evaluations by both the Agency and Area Office staff represent individual judgments as to the interpretation of the regulations and language of the application because there are no specific standards established for these evaluations. Appellee responds that his decision was based upon a combination of the review given to appellant's application by both the Agency and Area Office staff. He states that the reviewers' evaluations were based upon standards established in the circular. Appellee contends that five criteria for evaluating core Management grant applications were established by BIA: (1) Need or Problem Statement, (2) Work Statement, (3) Budget Justification, (4) Coordination, and (5) Management or Self-Monitoring System. He further notes that the reviewers were provided with specific written guidelines for evaluating each of the five criteria.

It is undeniable that a certain amount of personal judgment enters into the evaluation of any application. This is because the evaluation is done by human beings. The objective in evaluating such applications is, therefore, to minimize the number of things left to personal judgment, through, for example, providing guidance as to what factors should be present in the application, requiring a specified evaluation if certain conditions are present or not present, and having the application evaluated by a number of people so that personal judgments can be averaged out of the final evaluation.

The record shows that BIA and appellee took appropriate steps to minimize the effect of personal judgment in evaluating Core Management grant applications. Specific instructions were provided to reviewers concerning each of the areas on which they were to evaluate the applications. In the Anadarko area, applications were reviewed at both the Agency and Area Office level, and the final score was reached by averaging the Agency and Area Office scores. The Board finds that the element of personal judgment was appropriately minimized in evaluating appellant's application.

Appellant argues that 25 CFR 278.24(b) requires five specific narrative statements, none of which concern a management or self-monitoring system. Such a monitoring system is, however, the sole consideration under criterion 5 of the form used by BIA for reviewing Core Management grant applications. 3/

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3/ Appellant's application was given a score of 15 out of a possible 15 on this criterion by the Agency, which assumed that monitoring would be done by the Tribal Administrator, apparently based upon the following statement in the job description for the Tribal Administrator: "Monitors all grants and contracts under the auspices of the Delaware Tribe for the purpose of documenting their status in regards to the goals and objectives established for each." The application received a score of 0 from the Area Office,

Appellee states that the five rating criteria were established under the circular, not under 25 CFR 278.24, noting that 25 CFR 278.24 (b) states that "[t]he application shall also contain program narrative statements which include" five specific areas (emphasis added). Appellee contends that the narrative statements required by section 278.24(b) are, therefore, in addition to all of the requirements of 25 CFR 278.24(a), which provides that "[a]pplications for a grant under this subpart shall follow the application requirements set forth in Attachment M of the Office of Management and Budget Circular A-102." He concludes that the discussion in appellant's application under criterion 5 was inadequate, although he notes that this was only one of the criteria against which the application was reviewed.

In essence appellant argues that it was not on notice that its application was required to have, and would be evaluated on, a discussion of a system for monitoring progress under any grant that might be awarded.

The Board requested from the Area Office a complete copy of the information given to Core Management grant applicants. The requested information has not been received. Based on the administrative record before it and the regulations, the Board can find no evidence that appellant was clearly on notice that it was required to provide a narrative description of a system for monitoring progress under any grant that might be awarded. In support of his decision, appellee refers to the instructions given to those persons reviewing the applications. There is no evidence that these instructions were provided to grant applicants. Furthermore, although it is arguable that a thorough and precise reading of the circular and its various attachments might have informed appellant that such a narrative statement was required, the record does not show that appellant was given this information. 4/

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fn. 3 (continued)

which stated: "There is no monitoring or evaluation plan. There are no time frames for completion of tasks, nor duties of monitoring outlined. No method of corrective actions and work plan is difficult to measure progress. No reporting system is identified to aid tribal leadership to monitor progress."

4/ Attachment I to the circular sets forth monitoring requirements. There is no evidence in the record that the information given to Core Management grant applicants included this attachment.

Part IV of Standard Form (SF) 424, Application for Federal Assistance, requires a narrative statement concerning the program to be funded. The instructions for completing the narrative statement could be read to require monitoring information, although no form of the words "monitor" or "report" appears in the instructions. One sentence in section 3c of the instructions provides: "Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified in item 2 are being achieved." There is no evidence that Part IV of SF 424 and its accompanying instructions were included in the information given to grant applicants. Appellant's application contains only page 1 of SF 424, which does not include Part IV.

[1] When the administrative record fails to show that appellant was clearly informed of the requirement to provide a narrative statement concerning a monitoring system, and when the record further shows that the decision might have been different if the applicant had provided this information, a decision denying the application cannot be sustained. The case must be remanded for development of an adequate record and issuance of a new decision. Cf., Cecilia Plain Feather v. Acting Billings Area Director, 18 IBIA 26 (1989); Patricia A. Quisno v. Billings Area Director, 17 IBIA 278, 283 (1989); Aleutian/Pribilof Islands Association, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 9 IBIA 254, 89 I.D. 196 (1982), after remand, 10 IBIA 23 (1982). 5/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the February 9, 1989, decision of the Acting Anadarko Area Director is vacated and this matter is remanded to BIA.

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

I concur:

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//original signed  
Anita Vogt  
Administrative Judge

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5/ Appellant also argues that there were no specific deficiencies in its application and that under 25 CFR 278.25(a)(2) the Superintendent should have notified it within 10 days if its application was incomplete because no audit report was included. Because of the finding that this case must be remanded, these arguments are not addressed. The parties are, however, referred to the Board's recent decisions in Caddo Indian Tribe of Oklahoma v. Acting Anadarko Area Director, 18 IBIA 63 (1989); and Lower Elwha Tribe v. Portland Area Director, 18 IBIA 50 (1989), for further guidance.