



INTERIOR BOARD OF INDIAN APPEALS

Spokane Tribe of Indians v. Acting Portland Area Director,
Bureau of Indian Affairs

24 IBIA 227 (09/24/1993)



United States Department of the Interior

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

SPOKANE TRIBE,
Appellant

v.

ACTING PORTLAND AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Vacating Decision and
: Referring Appeal to Assistant
: Secretary - Indian Affairs
:
: Docket No. IBIA 93-60-A
:
: September 24, 1993

This is an appeal from a February 24, 1993, decision of the Acting Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), denying appellant's application for a FY 1993 Small Tribes grant. For the reasons discussed below, the Board vacates the Area Director's decision and refers this appeal to the Assistant Secretary - Indian Affairs.

Pursuant to an announcement published at 57 FR 54480 (Nov. 18, 1992), appellant filed an application for a Small Tribes grant. The application was reviewed by a panel of four reviewers in the Portland Area Office. On February 24, 1993, the Area Director notified appellant that its application ranked ninth among 15 applications and that only the six highest ranking applications were funded. The Area Director further stated:

[T]he reasons that your grant application did not score higher, as indicated by the raters, are as follows:

1. Purpose: Higher scores went to those applications not purchasing equipment.
2. Budget: The cost for equipment resulted in a lower score.
3. Program Work Statement: This portion was confusing. Tribe indicated that the problem was more financial, however the grant is for audit compliance and resolution.

Appellant objects to all three reasons given in the Area Director's decision.

Upon comparing the reasons given in the Area Director's decision with the remarks made by the reviewers, the Board finds that there are substantial differences. Under the factor "Purpose," which is titled "Basic Small

Tribes Component" on the rating form, two of the four reviewers gave appellant a perfect score of 10. One reviewer stated that he/she had reduced appellant's score because of appellant's plan to buy equipment. This reviewer, however, deducted only one point, giving appellant a score of 9 for this factor. The fourth reviewer gave appellant only 5 points for this factor, stating: "P.D. [evidently, position description] doesn't require professional."

Under the factor "Budget Justification," two reviewers gave appellant a perfect score of 10. The other two, who gave appellant scores of 5 and who both commented that appellant had failed to explain adequately its cost items and how such costs were reasonable. Neither directed his/her comments to appellant's proposed equipment purchase which, as shown in appellant's budget, accounted for only a small portion of its proposed expenditures.

Under these circumstances, the Area Director's reference to equipment purchase in connection with both the "Purpose" and "Budget Justification" factors is misleading. Only one point was deducted specifically for this reason under "Purpose" and none under "Budget Justification." At the same time, the Area Director failed to mention the reasons for which a higher number of points were deducted under these factors.

The same problem is evident in the third reason given by the Area Director, concerning the factor "Program Work Statement." Contrary to the Area Director's statement, none of the reviewers mentioned any difficulty in differentiating between financial and audit matters in appellant's application. Three reviewers, however, stated that appellant's application lacked sufficient detail. Two of those three stated that appellant failed to explain adequately how it would meet its needs or overcome its problems. All three of the commenting reviewers deducted points from appellant's score under this factor.

Clearly, a tribe which is not given the true reasons for the scoring of its application can neither adequately prepare an appeal nor improve its application for future years. In its appeal in this case, appellant responded to the reasons for denial given in the Area Director's decision, obviously unaware of the real reasons why its application lost points.

The Board has stated that it is a violation of due process to deny an application for financial assistance on grounds not communicated to the applicant. Quileute Tribe v. Portland Area Director, 23 IBIA 20 (1992); Price v. Portland Area Director, 18 IBIA 272 (1990). In this case, the Board concludes that the Area Director's inaccurate summary of the reviewers' comments resulted in a violation of appellant's right to due process. ^{1/}

^{1/} Reviewers' comments may not always be amenable to accurate summarization. For this reason, some Area Directors simply furnish copies of the reviewers' comments to tribes whose applications are rejected.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Portland Area Director's February 24, 1993, decision is vacated. As it did in Quileute Tribe and Price, where violations of due process were found and where no immediate remedy was apparent, the Board refers this appeal to the Assistant Secretary - Indian Affairs for further consideration in accordance with the discretion granted to her.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge