



INTERIOR BOARD OF INDIAN APPEALS

Puyallup Tribe of Indians v. Chief, Branch of Judicial Services,
Bureau of Indian Affairs

26 IBIA 125 (07/14/1994)



United States Department of the Interior

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

PUYALLUP TRIBE OF INDIANS, : Order Affirming Decision
Appellant :
 :
v. :
 :
 : Docket No. IBIA 94-76-A
CHIEF, BRANCH OF JUDICIAL SERVICES, :
BUREAU OF INDIAN AFFAIRS, :
Appellee : July 14, 1994

This is an appeal from a February 8, 1994, decision of the Chief, Branch of Judicial Services, Bureau of Indian Affairs (Chief; BIA), declining to consider appellant's application for a FY 1994 Special Tribal Court grant because it exceeded the 50-page limit imposed in Part IV, section E(3), of the program announcement, 58 FR 53374, 53377 (Oct. 14, 1993).

After a briefing schedule was established the Chief filed a motion to dismiss the appeal on the basis that appellant had failed to submit a signed copy of Standard Form (SF) 424B, Assurances--Non-Construction Projects, by the December 17, 1994, deadline for submission of applications. Instead, the Chief contends, appellant submitted an unsigned copy of SF 424B with its application and did not submit a signed copy until December 20, 1993.

Appellant did not respond to the Chief's motion to dismiss. Based on appellant's failure to respond to the motion, and the materials in the administrative record, the Board finds that appellant did not submit the signed SF 424B by December 17, 1994.

Even so, the Board denies the Chief's motion to dismiss. Appellant was entitled to be informed, in the decision rejecting its application, of the reasons for rejection. See Spokane Tribe v. Acting Portland Area Director, 24 IBIA 227 (1993) (It is a denial of due process to deny an application for financial assistance for reasons not communicated to the applicant). The Board therefore declines to dismiss this appeal on the basis of a new reason for rejection raised for the first time in the Chief's motion to dismiss.

With respect to the page limit addressed in the Chief's February 8, 1994, decision, Part IV, section E, of the Federal Register announcement provided:

(3) Each application shall not exceed fifty (50) pages, space and one-half or double-spaced, exclusive of required forms and assurances which are listed below. Applications which are single-spaced will be considered only if it is determined the applicant has not thereby gained a competitive advantage.

(4) The following documents are excluded from the 50 page limitation: A tribal resolution or endorsement or such other written expression as tribal laws or practice require; written assurance of the procedures required in OMB Circular A-128; proof of non-profit status; Standard Forms (SF) 424 and 424B; Certification regarding a Drug-free Workplace, DI-1955 (May 1990); Assurance--Non-construction Programs; and, Certification Regarding Lobbying. All required forms are included at the end of this announcement.

(5) Within the 50 page limitation, the following guidelines are suggested:

(a) Background and summary description (one page);

(b) Program narrative (20-30 pages);

(c) Budget and budget justification (5-10 pages); and

(d) Applicant's capability statement, including an organization chart and vitae for key project personnel, including consultants and third-party technical assistance providers (5-10 pages).

(6) In addition, applicants are encouraged to include letters endorsing or supporting the proposed project which are specific and/or verify tangible commitments to the project, e.g., staff, facilities, training.

The Chief found that appellant's application was 93 pages long. Appellant contends that all but 48 pages of the application should be excluded from the 50-page limitation. Appellant contends that the 45 pages which should reasonably be excluded from the fifty (50) page limit are:

- * Cover Page/Transmittal Letter (1 page)
- * Table of Contents (1 Page)
- * Section Dividers that have no bearing on the application content (12 pages)
- * Maps of the Puyallup Reservation (2 pages)

The remaining pages are letters endorsing and/or supporting the proposed project such as staffing and training documentation.

(Appellant's Notice of Appeal and Statement of Reasons at 2-3).

While appellant specifically identifies 16 of the 45 pages which it believes should be excluded from the 50-page limitation, it does not identify the remaining 29 pages, which it describes as letters of endorsement or support.

There are 11 pages of letters in a section of appellant's application titled "Letters of Support." The letters in this section appear to be correctly categorized. Under Nisqually Indian Tribe v. Chief, Branch of Judicial Services, 26 IBIA 2 (1994), these 11 pages are exempt from the 50-page limitation.

No other documents in appellant's application are readily identifiable as letters of endorsement and support. At the very least, it was appellant's responsibility in this appeal to identify any documents it believes are properly classified as letters of endorsement and support, but which were not so classified in its application. Having failed to do so, appellant has also failed to carry its burden of proof concerning any such documents. Cf. River Bottom Cattle Co. v. Acting Aberdeen Area Director, 25 IBIA 110, 113 (1994) (An appellant bears the burden of showing error in the decision on appeal).

For purposes of this decision only, the Board assumes that the 16 pages appellant specifically identifies as exempt from the 50-page limitation are in fact exempt. Deducting those 16 pages, as well as the 11 pages identified in appellant's application as "Letters of Support," from BIA's count of 93 pages, there remain 66 pages in appellant's application.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Chief's February 8, 1994, decision is affirmed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge