



INTERIOR BOARD OF INDIAN APPEALS

Colville Confederated Tribes v. Acting Portland Area Director,
Bureau of Indian Affairs

27 IBIA 24 (11/15/1994)



United States Department of the Interior

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

COLVILLE CONFEDERATED TRIBES, : Order Affirming Decision
Appellant :
 :
v. :
 : Docket No. IBIA 94-153-A
ACTING PORTLAND AREA DIRECTOR, :
BUREAU OF INDIAN AFFAIRS, :
Appellee : November 15, 1994

This is an appeal from a May 6, 1994, decision of the Acting Portland Area Director, Bureau of Indian Affairs (Area Director; ETA), denying appellant's application for a FY 1994 Planning grant. For the reasons discussed below, the Board affirms the Area Director's decision.

Pursuant to an announcement of the availability of funding published in the Federal Register, 58 FR 68702, 68704 (Dec. 28, 1993), appellant applied for a FY 1994 Planning grant. Its application was reviewed by a panel of four reviewers in the Portland Area Office and was ranked seventh of 14 applications. Only the top four applications were funded.

By letter of May 6, 1994, the Area Director informed appellant that its application had not received a high enough score to be funded. The Area Director also provided appellant with copies of the rating sheets prepared by the review panel members.

Appellant appealed the denial to the Board. Appellant's principal objection is to the disparity in the scores its application received from the four reviewers. These scores were 90, 88, 80, and 50. Appellant contends that the reviewer who gave its application a score of 50 (who will be called Reviewer 4 in this discussion) failed to understand the project described in appellant's application. This contention appears to be based on Reviewer 4's comments under Criterion A, "Program Work Statement." The reviewer there stated: "Schedule of Activities goes through June 1995. Seven objectives are vague and need more refinement. How do tribal enterprises, pollution control, youth program, budget, unemployment, codes, and schools possibly relate?" ^{1/}

^{1/} Appellant's application is titled "Colville Tribal Self Sufficiency Plan" and states that it seeks "a planning grant [to provide] funding for technical expert assistance and guidance in developing the following:

"1. Develop and implement a Colville Tribal Enterprises Corporation (CTEC) Stabilization Plan.

"2. Develop and implement a Solid Waste and Pollution Control Program.

"3. Develop a Comprehensive Youth Program on the Colville Reservation.

It is apparent that Reviewer 4 had a different view of appellant's proposed project than did the other reviewers. Of a possible 40 points for Criterion A, he gave appellant's application a score of 20, while the others gave it scores of 38, 35, and 40. From his comments, it appears likely that Reviewer 4 considered the various goals listed in appellant's application too diverse to be accomplished in one project and that he therefore had doubts about appellant's ability to complete the project successfully.

Appellant also objects to Reviewer 4's comments under criterion B, "Applicant Capability." Reviewer 4 stated: "Consultants will be used. Who? No vitae or position descriptions or qualifications are discussed." Appellant responds that it did not plan to choose consultants until after it received a grant. Further, appellant states, its application discussed the work to be done by the consultants and the consultants' qualifications. It is true that these matters are discussed to some extent in appellant's application. The Board notes, however, that two of the other three reviewers also commented on the lack of position descriptions or resumes in appellant's application, specifically with respect to staff positions.

There is clearly a wide disparity between the total score given by Reviewer 4 and the scores given by the other reviewers. This does not necessarily mean that Reviewer 4's score is invalid, however. It may simply reflect a different judgment. In Delaware Tribe v. Acting Anadarko Area Director, 18 IBIA 98, 100 (1990), the Board stated:

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 specific evaluation if certain conditions are present or not present, and having the application evaluated by a number of persons so that personal judgments can be averaged out of the final evaluation.

fn. 1 (continued)

"4. Develop and adopt a Tribal Legislative Budget Process.

"5. Place a minimum of 10% of the unemployed tribal members into public and private sector jobs by decreasing the unemployment rate for these tribal members.

"6. Revise, update and approve the present Tribal codes.

"7. Coordinate with all schools on/near the Colville Reservation, that receive federal funds for Indian children, to implement a Native Language and Culture Retention Program." (Application at 3).

The application also indicates that appellant intended to hire consultants to assist tribal officials build consensus in order to accomplish these goals.

See also Kawerak, Inc. v. Acting Juneau Area Director, 24 IBIA 194 (1993); La Jolla Band of Mission Indians v. Acting Sacramento Area Director, 18 IBIA 263 (1990).

In this case, the Area Office provided instructions to reviewers concerning each of the areas in which they were to evaluate the applications. Four reviewers reviewed the applications. The Board finds that the element of personal judgment was appropriately minimized in evaluating appellant's application. 2/

Appellant also objects to the fact that one reviewer did not provide written comments to support the scores he gave appellant's application. The reviewer who failed to provide comments gave appellant a score of 80. The Board agrees with appellant that the reviewer should have provided comments. It finds, however, that under the circumstances of this case, the failure of one reviewer to provide comments is not enough to require that the Area Director's decision be vacated. 3/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's May 6, 1994, decision is affirmed.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge

2/ The Board notes that some of the other applications also received widely diverse scores from the four reviewers. Disparities among reviewers are likely to be greater where, as here, reviewers are prohibited from discussing the scoring with other reviewers and where the reviewers' independent scores are simply added together to arrive at a total score for each application.

It is possible to reduce disparities by employing different review methodologies. In BIA's FY 1994 Tribal court grant program, for instance, the review panels were required to reach consensus on an applicant's score within a certain number of points.

There are, of course, advantages and disadvantages to both approaches. The Board is unwilling to conclude that the approach employed by the Area Director was unreasonable.

3/ The Board might find otherwise if the reviewer who failed to provide comments had been the one who gave appellant's application a score of 50.