



INTERIOR BOARD OF INDIAN APPEALS

Stillaquamish Tribe v. Portland Area Director, Bureau of Indian Affairs

27 IBIA 37 (11/22/1994)



United States Department of the Interior

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

STILLAGUAMISH TRIBE, : Order Affirming Decision
Appellant :
 :
v. : Docket No. IBIA 94-152-A
 :
ACTING PORTLAND AREA DIRECTOR, :
BUREAU OF INDIAN AFFAIRS, :
Appellee : November 22, 1994

Appellant Stillaguamish Tribe seeks review of a May 5, 1994, decision issued by the Acting Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to fund appellant's application for a FY 1994 Small Tribes grant. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Pursuant to an announcement published in the Federal Register, 58 FR 68696 (Dec. 28, 1993), appellant filed an application for a grant under the Small Tribes program. The application sought funding for the sole purpose of upgrading appellant's telephone system.

On May 5, 1994, the Area Director notified appellant that its application would not be funded. The decision letter stated that appellant's application was not rated high enough by the review panel to be funded, and enclosed the reviewers' comments.

Appellant contends in general that the point range given to its application by the reviewers "indicates an extraordinary degree of variability and calls into question the standards used by the raters." Appellant's application was reviewed by five individuals, who gave the application ratings of 90, 94, 40, 82, and 60.

The Board has previously discussed discrepancies in the scores given by different individuals in reviewing applications under BIA's competitive grant programs. 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.

See also Colville Confederated Tribe v. Acting Portland Area Director, 27 IBIA 24 (1994), and cases cited therein. As it held in Colville, the Board finds that the element of personal judgment was appropriately minimized in evaluating appellant's application.

In general, it is clear from appellant's notice of appeal that it believes the reviewers failed to take into consideration that some aspects of its application were self-evident, and did not need further explanation. This is a competitive grant program. Even though appellant's application might have been less complicated than other applications because it sought to accomplish only one, clearly defined, goal, this fact did not absolve appellant of the responsibility to meet the program requirements.

Appellant's first specific objection is to a rating of zero given to the budget justification component of its application by one reviewer. Appellant compares that reviewer's statement that there was no budget justification with another reviewer's comment that the budget justification was a "straight forward estimate of how much an upgraded system will cost."

Section D(2) (iii) (C) of the program announcement states that the application must "contain[] a line item budget with a separate narrative explaining each cost item and how such costs are reasonable." Three of the five reviewers deducted a significant number of points from the budget justification component because appellant's application did not contain a narrative. Even though one reviewer deducted more points, when the announcement for a competitive grant program specifically states that an application must contain a separate narrative budget justification, the Board cannot conclude that it is inappropriate to give zero points to an application that did not include such a narrative.

Appellant next objects that two reviewers deducted points under the management or self-monitoring component because they found that this criterion was not specifically addressed. Appellant notes that another reviewer stated that "the obvious conclusion for self-monitoring is that a new system can and will reduce complaints, increase effectiveness and efficiently [sic] and allow themselves to concern themselves with tribal matters is very well put." Appellant contends that it should not be necessary to state that if the new system failed, it would contact the vendor for service.

A different three of the five reviewers, including the reviewer whose final score was 90, deducted points from appellant's application for the failure to describe the monitoring process. Even the comment appellant quotes shows that the reviewer was making a deduction about the monitoring aspect, not responding to something appellant stated. The Board cannot conclude that appellant's failure to describe the monitoring system because of a belief that it was self-evident, excuses the failure to comply with the program requirements.

Appellant's third objection is to a comment made by one reviewer that there was "no certification that no elected tribal official will receive salary or other form of compensation" under the grant. Appellant contends

that its application was for the exact amount specified in the vendor's estimate, and argues that its tribal officials are honest.

The reviewer appellant quotes made the comment concerning compensation on the bottom of the score sheet. It is not clear that this reviewer deducted any points based on the comment. However, another reviewer also made the same comment under the management or self-monitoring component section.

Section C(4) states: "The application must certify that no elected tribal official will receive a salary or any other form of compensation from a grant under this Announcement." Because appellant's application did not include the required certification, the Board cannot hold that there was any error in deducting points for the failure to include such a certification.

Finally, appellant objects to a comment made by one reviewer under the program work statement component that "more emphasis should be focused on the program work statement with detailed information describing timeframe schedule and various personnel affected." Appellant argues that the new telephone system would obviously affect every tribal employee, and there did not appear to be any reason to give a detailed schedule of the installation.

Although two other reviewers made substantial deductions in the work statement component, neither made a comment similar to that quoted above. However, even if the Board were to hold that appellant should have received the full points in this component from the reviewer to whose comment appellant objects, this would give appellant only 10 more points. The Area Director's decision letter indicated that only the top nine applications were funded. Ten additional points would not change appellant's 17th position among the 19 applications received.

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 May 5, 1994, decision is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge