



INTERIOR BOARD OF INDIAN APPEALS

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

27 IBIA 87 (12/19/1994)



United States Department of the Interior

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

IOWA TRIBE OF OKLAHOMA,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	Docket Nos. IBIA 94-121-A
	:	IBIA 94-122-A
ACTING ANADARKO AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	December 19, 1994

Appellant Iowa Tribe of Oklahoma seeks review of an April 11, 1994, decision issued by the Acting Anadarko Area Director, Bureau of Indian Affairs (Area Director; BIA), disapproving appellant's applications for FY 1994 grants under both the Small Tribes program and the Planning grant program. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

The Area Director's decision states:

The applications were received at the Shawnee Agency on March 2, 1994, and reviewed for completeness on March 3. Information which was required to complete both applications was requested on March 4 by the Agency Contract Technician from Laura, one of the tribal Planning Department staff. Material items needed were A-128 audit report, CPA certification, budget details and justifications, and certifications of required administrative systems.

The tribe was advised to provide this information by March 11; this would permit completing the reviews and submitting the proposals to this office by March 15. Proposals were required to be complete when submitted to the Area office for review. The agency's request was not complied with and the proposals were submitted as received; they were postmarked March 15, 1994.

Appellant states that its files did not contain a written request for additional information until March 15, 1994; that Laura was absent from work on March 4, 1994; and that BIA has not proven that it requested any additional information prior to March 15, 1994. Based on an argument that the program announcements published in the Federal Register created a duty in the Agency to notify it within 10 calendar days if its application was incomplete, and that the Agency breached this duty, appellant asks that both of its applications be funded in the full amounts requested.

The Area Director did not file an answer brief.

Section D(1) of the Small Tribes grant program announcement states:

Applications shall initially be submitted to the appropriate agency Superintendent for review and comment * * *. The Superintendent upon receipt of the application shall:

* * * * *

(b) Review the application for completion of information and, within ten (10) calendar days, request any additional information which may be required to conduct a review of the application.

(58 FR 68696, 68698 (Dec. 28, 1993)). Section C(6)(a)(i) of the Planning grant program announcement contains a virtually identical provision. 58 FR 68702, 68705 (Dec. 28, 1993).

The Board begins its review of these appeals by repeating a holding it has consistently made: In competitive grant programs, consideration of information submitted after the deadline for submission of an application would violate BIA's and the Board's duty to give fair and equitable consideration to all grant applications by giving some applicants two chances to submit an acceptable application. See, e.g., Akiak Native Community v. Acting Juneau Area Director, 26 IBIA 232 (1994), and cases cited therein.

The underlying question in this appeal is whether information and/or documents necessary for a complete application may be submitted after the filing deadline established in the Federal Register. Both Federal Register announcements clearly state that applications must be filed with the Superintendent by February 28, 1994. Appellant's interpretation of the announcements, based at least in part on a form letter which the Area Director sent to all tribes under his jurisdiction, would extend that filing deadline until March 15, 1994. In Rosebud Sioux Tribe v. Acting Aberdeen Area Director, 26 IBIA 272 (1994), the Board noted that the tribe was allowed to submit additional information after February 28, 1994. Although dicta in Rosebud, the Board stated that the filing deadline was the date established in the Federal Register announcement.

The Board presumes that the Aberdeen and Anadarko Area Directors were attempting to interpret the sections of the announcements concerning Agency responsibilities when they allowed the submission of additional information after February 28, 1994. Other Area Directors apparently interpret these sections differently, declining to accept additional materials after the deadline established in the Federal Register. See, e.g., Akiak. The Board cannot agree with a reading of those sections which allows an Area Director to extend the time for submitting a complete application. To do so would be unfair to those tribes which complied with the filing deadline set in the announcements. Although the "Agency Office Responsibility" sections of the announcements are by no means models of clarity, the Board concludes that

those sections allow for submission of additional materials only where an application is submitted sufficiently in advance of the filing deadline to allow for Agency review and submission of missing materials by the deadline.

Appellant's applications were lacking very basic information that was clearly required under the program announcements. The Board has also consistently held that it is an applicant's responsibility to ensure that its application is complete. Akiak, 26 IBIA at 233, and cases cited therein. The Board is not inclined to shift this responsibility to BIA, which would be the inevitable result of accepting appellant's argument.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Anadarko Area Director's April 11, 1994, decision is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge