



INTERIOR BOARD OF INDIAN APPEALS

Hopland Band of Pomo Indians v. Sacramento Area Director,
Bureau of Indian Affairs

27 IBIA 226 (03/08/1995)



United States Department of the Interior

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

HOPLAND BAND OF POMO INDIANS, Appellant	:	Order Vacating Decision and Remanding Case
v.	:	
SACRAMENTO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	Docket No. IBIA 94-137-A March 8, 1995

This is an appeal from a May 27, 1994, decision of the Sacramento Area Director, Bureau of Indian Affairs (Area Director; BIA), denying appellant's application for a FY 1994 Small Tribes grant. For the reasons discussed below, the Board vacates the Area Director's decision and remands this matter to him for further proceedings.

Pursuant to an announcement published in the Federal Register, 58 FR 68696 (Dec. 28, 1993), appellant filed an application for a grant under the Expansion/Enhancement component of the Small Tribes grant program. On May 27, 1994, the Area Director notified appellant that its application was not approved. The decision letter stated:

The tribe was a successful applicant during FY 1993 for a basic grant for the reason that the tribe was in need of improving the management systems and negotiating an indirect cost rate. The application stated the agreement to submit quarterly financial status and progress reports. No reporting requirements have been met under the FY 1993 Small Tribes Grant GTJ51T52110. In addition, the FY 1994 grant under review did not comply with the requirements of C. Content of Application (7) which states "Progress and accomplishment reports for a prior year grant must be submitted with an application for a continuation grant. Reports will be used in the rating of continuation grant applications, appropriations permitting, since subsequent grants will include performance as a criteria for grant renewal."

On June 10, 1994, in response to a telephone inquiry from appellant, the Area Director provided further explanation of the denial. His June 10 letter stated in part:

Definition of a continuation grant in this program can be described as a grant that assists a Tribe in the continued pursuit of goals and objectives stated in the basic grant. Also, to expand these goals and objectives to enhance the Tribe's governmental functions and service delivery systems.

The application stated the Tribe agreed to submit quarterly financial status and progress reports, which were not submitted in their entirety. This did not comply with C. Content of Application (7), as addressed in the letter of denial.

Grant applications were rated by 3 raters utilizing standard forms and criteria to ensure uniformity, continuity and consistency on all applications. [Appellant's] application received ratings of 48, 0 and 0. ^{1/} The total score of 48 was below a cut-off score which awarded Tribes above the cut-off score and denied Tribes below that score.

The letter continued with a description of the written comments made by the panel members who reviewed appellant's application.

Appellant filed a notice of appeal from the May 27, 1994, decision. It also filed a statement of reasons.

Appellant contends that the grant it sought for FY 1994 under the Expansion/Enhancement component of the program was not a continuation of its FY 1993 grant, which had been awarded under the Basic Small Tribes component. Therefore, appellant argues, it was not required to submit progress reports under section C(7) of the program announcement.

The FY 1994 Small Tribes grant program was divided into three components and was "designed to meet the needs of three (3) categories of small tribes." 58 FR at 68696. The three components were the Developmental component, the Basic Small Tribes component, and the Expansion/Enhancement component. Describing the two components relevant here, section A of the program announcement stated:

(2) Basic Small Tribes Component

This program component is for small Indian tribes experiencing problems operating programs and operating properly under basic management systems (this is the basic Core Management type program component);

(3) Expansion/Enhancement Component

This program component is for small Indian tribes which, for the most part, have eliminated their administrative and management problems and want to plan for the expansion or the enhancement of functions as well as for the expansion or enhancement of service delivery systems but do not have the capability or the resources to do so.

(58 FR at 68696).

^{1/} It is not clear why two of the panel members who reviewed appellant's application gave it a score of 0. It appears possible that, before arriving at numerical scores, these reviewers determined that the application should not be considered at all.

Each component had its own eligibility criteria, described in section B, and its own rating criteria, described in section D. Section C concerned the contents of grant applications. Subsection C(1) listed separate requirements for each component. Subsections C(2) through (9) applied to all three components. Subsection C(7) provided: "Progress and accomplishment reports for a prior year grant must be submitted with an application for a continuation grant. Reports will be used in the rating of continuation grant applications, appropriations permitting, since subsequent grants will include performance as a criteria for grant renewal."

In its application for a FY 1994 Expansion/Enhancement grant, appellant stated that it had, for the most part, eliminated administrative and problems (Application at 1). The clear implication of this statement, and of the fact that appellant even applied for a grant under the Expansion/Enhancement component, is that it had made progress during FY 1993, *i.e.*, that it had eliminated most of the management problems it presumably had when it applied for a Basic Small Tribes grant in FY 1993. Thus, it might seem logical to require that appellant support its FY 1994 application by including progress reports under its FY 1993 grant.

More generally, given the limited funds and extremely competitive nature of the Small Tribes grant program, it might seem appropriate to require that a tribe which has received a grant under the program in a prior year show that it has made good use of that grant before it may be awarded another grant under the program, regardless of whether the earlier grant was in the same or a different component than the one for which a grant is currently sought.

However, the language of subsection C(7) does not support a conclusion that progress reports are required in any case other than that of a continuation grant. The term "continuation grant" is not defined in the announcement, or in the regulations in 25 CFR Part 272. The term itself, however, conveys the sense that the grant originally awarded is simply being extended. This is also the connotation of the term "grant renewal" as used in this section. In light of the fact that each of the three components of the Small Tribes grant program has its own eligibility and rating criteria, it would be stretching a point to construe a grant under one component of the program as a "continuation" or "renewal" of a grant under one of the other two components.

The Board finds that subsection C(7) does not require that progress reports be included with a grant application where the applicant seeks a grant under a component other than the component under which it has previously been awarded a grant. Even if subsection C(7) were deemed to be ambiguous in this regard, the ambiguity would have to be resolved in favor of the tribal grant applicants. See Reno-Sparks Indian Colony v. Phoenix Area Director, 24 IBIA 199 (1993) (BIA regulations and guidelines concerning grant programs for Indian tribes are subject to the rule of construction that enactments intended to benefit Indians are to be liberally construed in their favor).

The Area Director's decision appears to have been based, not only on the fact that appellant did not submit FY 1993 progress reports with its FY 1994 grant application, but also on the fact that it had failed to meet reporting requirements under the term of its FY 1993 grant.

Appellant's FY 1993 grant was for the period September 20, 1993, through September 19, 1994. The grant required appellant to submit performance reports "within 15 days following the conclusion of each three month period (quarterly) of this Grant" (FY 1993 Grant Agreement at 3). Appellant's first quarterly report was due in early January 1994.

Appellant did not submit its first report until March 2, 1994. Thus, at the time it submitted its FY 1994 application on February 27, 1994, it was in a delinquent status as to the reporting requirements for its FY 1993 grant. This delinquency, and possibly a subsequent delinquency concerning the second quarterly report, 2/ were evidently what the Area Director had in mind when he issued his May 27, 1994, decision and his June 10, 1994, letter.

The Board does not find any requirement in the program announcement stating that an applicant for a FY 1994 grant must be current in its reporting or other obligations under previously awarded grants. Thus, for the same reasons discussed above, the Board finds that the fact appellant was delinquent in its reports under its FY 1993 grant should not have been taken into consideration in rating it for a FY 1994 grant.

This matter must be remanded to the Area Director. The Area Director shall have appellant's application re-rated, without consideration of the fact that appellant did not submit progress reports for its FY 1993 grant with its FY 1994 application and without consideration of the fact that appellant was delinquent in its reporting under the FY 1993 grant. The Board assumes that FY 1994 grant funds have been expended. Therefore, if upon being re-rated, appellant's application scores high enough to be funded under FY 1994 standards, the Area Director shall determine an appropriate remedy.

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 27, 1994, decision is vacated and this matter is remanded to him.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

2/ Appellant's second quarterly report under the FY 1993 grant was due in early April 1994. At the time appellant's FY 1994 grant application was rated on Mar. 23 and 24, 1994, appellant's first report had been filed, albeit two months late, and its second report was not yet due. Evidently, however, the second report had not been filed by the time the Area Director's decision was issued on May 27, 1994. The administrative record for this appeal, submitted by the Area Director on July 8, 1994, indicates that only one quarterly report had been filed at that time.