



INTERIOR BOARD OF INDIAN APPEALS

Nooksack Indian Tribe v. Deputy Commissioner of Indian Affairs

21 IBIA 155 (01/14/1992)



# United States Department of the Interior

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

NOOKSACK INDIAN TRIBE, Appellant	:	Order Affirming Decision
	:	
	:	
v.	:	
	:	Docket No. IBIA 91-118-A
	:	
DEPUTY COMMISSIONER OF INDIAN AFFAIRS, Appellee	:	January 14, 1992

Appellant Nooksack Indian Tribe seeks review of a June 26, 1991, decision of the Deputy Commissioner of Indian Affairs, Bureau of Indian Affairs (BIA), denying appellant's grant application under the Small Tribes Program. The Deputy Commissioner's decision states:

The Tribe's application did not rank high enough among the 109 tribal applications received to be considered for a grant under the terms of the announcement. The Tribe's application was weak or deficient in these areas:

The needs/problems statement does list five needs/problems as required by the Federal Register announcement, but there is no supportive documentation. There are references to a 1989 audit, but the report was not provided. One of the needs/problems cited inability to develop acceptable grant/contract applications, according to our records the Tribe administ[ers] several Bureau of Indian Affairs programs indicating the ability to prepare acceptable applications. The work statement does not address the needs/problems cited, but is totally oriented to an economic development effort.

Initially, the Board notes that its role in reviewing BIA decisions concerning grants under the Small Tribes Program is not to substitute its judgment for that of BIA, but rather to ensure that proper consideration was given to all legal prerequisites to the exercise of discretion. Furthermore, the Board has held that the appellant bears the burden of proving error in the decision not to fund its application. Sauk-Suiattle Indian Tribe v. Portland Area Director, 20 IBIA 238 (1991), and cases cited therein.

Appellant contends that it adequately demonstrated and/or documented its needs/problem without submitting the 1989 audit report. It included the report with its notice of appeal. In a competitive grant program, BIA can consider only the information and supporting documents that are included with the original grant application. If BIA were to consider additional information or support presented after the time for filing an application,

it would violate its duty to give fair and equitable consideration to all grant applicants. Thus, while inclusion of the audit report with the original application might have improved appellant's score, the report cannot be considered at this time. Caddo Indian Tribe of Oklahoma v. Acting Anadarko Area Director, 18 IBIA 63 (1989).

Appellant next argues that the fact that it can prepare acceptable applications in the social services area does not mean that it can prepare acceptable applications in other areas, such as economic development. Appellant's statement at unnumbered pages 6-7 of its application, concerning its inability to develop acceptable grant or contract applications, reads in its entirety:

Although technical expertise exists at the Tribal level to prepare state and federal grant applications for social service type projects, the Tribe does not have sufficient personnel resources to effectively develop loan applications for private financing. This generally requires the development of feasibility studies, financial projections, and business development plans. This will require an economic development specialist with a strong business background rather than the social service background of the traditional Tribal Planner. The Economic Development Specialist must possess both business management skills as well as business development skills.

In the past, the Tribe has been required to depend upon business development consultants to prepare necessary loan documents and business plans. This is very expensive and unfortunately, does not always result in a project which is appropriate for the Nooksack Tribe.

This statement does not show, or even allege, that appellant was unable to develop acceptable grant or contract applications. Instead, it merely states that appellant has previously relied upon expensive consultants. In the absence of more specific information from appellant, BIA did not err in looking to other grant and contract areas in order to determine whether appellant had demonstrated need in this area.

Finally, appellant contends that the long-range solution to its problems must include economic development, and that the lack of economic development has resulted in substantial tribal indebtedness. Unfortunately, the fact that a tribe may need assistance does not equate with a finding that it is entitled to receive a grant under the terms of the Small Tribes Program. Stillaquamish Tribe v. Portland Area Director, 18 IBIA 89 (1989).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the June 26, 1991, decision of the Deputy Commissioner of Indian Affairs is affirmed.

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

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//original signed  
Anita Vogt  
Administrative Judge