



INTERIOR BOARD OF INDIAN APPEALS

Kawerak, Inc. v. Acting Juneau Area Director, Bureau of Indian Affairs

24 IBIA 194 (09/16/1993)



United States Department of the Interior

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

KAWERAK, INC. , : Order Affirming Decision
Appellant :
 :
v. :
 :
 : Docket No. IBIA 93-92-A
ACTING JUNEAU AREA DIRECTOR, :
BUREAU OF INDIAN AFFAIRS, :
Appellee : September 16, 1993

Appellant Kawerak, Inc., seeks review of an April 8, 1993, decision issued by the Acting Juneau Area Director, Bureau of Indian Affairs (Area Director; BIA), denying appellant's application for a FY 1993 Planning grant. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Pursuant to an announcement published at 57 FR 54411 (Nov. 18, 1992), appellant filed an application for a Continuation Planning grant. The application was reviewed by a panel of reviewers in the Juneau Area Office. On April 8, 1993, the Area Director notified appellant that its application received a score of 84.33, and that the lowest score for which funds could be awarded was 88.33. Accordingly, the Area Director informed appellant that its application could not be funded.

On appeal, appellant contends that two of the reviewers gave it low scores although the narratives provided were positive. It argues that the scores were subjective, and that it should have received full scores in the Eligibility, Work Statement, Applicant Capability, and Management or Self-Monitoring System Categories. One reviewer deducted only 1 point in these four categories, while the other reviewers deducted 18 and 23 points.

The Board has previously considered allegations that the rating process for competitive grant programs is subjective. In Delaware Tribe of Western Oklahoma v. Acting Anadarko Area Director, 18 IBIA 98, 100 (1989), the Board held:

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

See also La Jolla Band of Mission Indians v. Acting Sacramento Area Director, 18 IBIA 263, 267 (1990).

The Area Director explained the process through which the scores were determined. The process included the review of all Planning grant applications by the same review panel, initial independent review of each application, a discussion of each application among the reviewers, and final independent scoring. This process, in addition to the instructions given to the reviewers, appropriately minimized the impacts of personal judgment.

Although appellant clearly disagrees with the scores given to its application by two of the reviewers, there is no basis for reversing the Area Director's decision because of that disagreement. In fact, the scores given by those reviewers appear to be more consistent than those given by the third reviewer.

Appellant also "object[s] to the policy decision made at Juneau Area Office to limit funding grant awards to \$35,000," and questions where the funding for this program has gone in light of the fact that it previously received grants of \$80,000 and \$60,000. The allocation of funding for the various BIA grant programs is a function of the amount of funding appropriated by Congress, the distribution of that funding among the various BIA Area Offices by the Central Office, and the distribution of the total amount received within each Area Office. These allocation decisions are committed to the discretion of BIA, and are not subject to review by the Board. See Yomba Tribal Council, Yomba Shoshone Tribe v. Acting Phoenix Area Director, 18 IBIA 243, 245 (1990); Washoe Tribe of Nevada and California v. Phoenix Area Director, 18 IBIA 192, 194 (1990); Lower Elwha Tribe v. Portland Area Director, 18 IBIA 50, 52 (1989).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Juneau Area Director's April 8, 1993, decision is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge