



INTERIOR BOARD OF INDIAN APPEALS

Pueblo of Taos v. Acting Director, Office of Tribal Services, Bureau of Indian Affairs

26 IBIA 130 (07/21/1994)



United States Department of the Interior

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

PUEBLO OF TAOS,	:	Order Vacating Decision and
Appellant	:	Remanding Case
	:	
v.	:	
	:	Docket No. IBIA 94-97-A
ACTING DIRECTOR OFFICE OF	:	
TRIBAL SERVICES, BUREAU OF	:	
INDIAN AFFAIRS,	:	
Appellee	:	July 21, 1994

Appellant Pueblo of Taos seeks review of a February 15, 1994, decision issued by the Acting Director, Office of Tribal Services, Bureau of Indian Affairs (Director; BIA), denying appellant's application for a FY 1994 grant under the Special Tribal Court program. This program was announced at 58 FR 53374 (Oct. 14, 1993). For the reasons discussed below, the Board of Indian Appeals (Board) vacates that decision, and remands this case to the Director for further consideration.

Appellant's application was considered by a review panel and received a score of 68 out of a possible 100. The Director's denial letter indicated that it was possible to fund only those applications receiving a score of 70 or above.

On appeal, appellant addresses each of the weaknesses in its application identified on page 2 of the Director's denial letter. The Board has divided these weaknesses slightly differently than they appear in the denial letter and appellant's filings.

The Director indicated that the application would have been enhanced by the inclusion of additional information concerning the number of and reasons for backlogged cases. Appellant argues that its application showed the court's subject matter jurisdiction, caseload, and caseload increase. The application also shows that the tribal court employees include a Judge who works three days per week, a full-time Court Administrator/Court Clerk, a part-time Clerk/Bailiff, and a full-time Probation Officer. It also shows that 346 cases were filed between January and November 1993.

Although it is not hard for the Board to believe that a court staff the size of appellant's might have problems managing an incoming caseload of 346 cases, even without considering cases remaining from prior years, the application does fail to correlate the requested funds with the backlog in order to show that the funds would in some measurable manner have an impact on the backlog. The Board finds the Director acted within her discretion in concluding that appellant's application was weak because it failed to provide more detailed information concerning the case backlog.

The Director also considered the application weak because neither the narrative nor the work plan indicated who would be responsible for ensuring that the tasks and objectives were completed, and the narrative did not designate who would oversee the work or draft the codes, procedures, and protocols. She noted, however, that the budget narrative indicated the Tribal Court Judge would perform the work. Appellant responds that its application showed the court personnel, and that, as in other tribal courts, the presiding judge and the court administrator are primarily responsible for court operations.

The Board has carefully read the program announcement to determine what it required in terms of the identification of who was responsible for monitoring and/or overseeing the work, and for actually accomplishing the work. Under Part III(A)(2) the announcement states that the application should thoroughly describe “[h]ow you will evaluate the impact and/or success of the proposed project (who, when and what standards or measurements will be used).” Also, Part IV(G)(d) provides that the application will be evaluated based on, *inter alia*, whether key staff are well qualified for the project and whether project management, staff, resources, and time commitments are adequate to carry out the proposed project. Given the statements in the announcement, the Board concludes that appellant had notice that it needed to describe who was going to be performing and/or monitoring work on the proposed project. The Director did not abuse her discretion by concluding that these areas were not adequately described.

In regard to the request for funds for training purposes, the Director stated that there was no detailed breakdown providing information relating to the types of training deemed necessary, nor regarding personnel to be trained, or travel and per diem costs. Appellant argues that its application indicated that training would be provided in both automated case management and general judicial, law-related, or court administrative areas. It states that actual schedules of classes or seminars to be given in 1994 were not available at the time it submitted its application, so that it could not provide more specific information concerning training.

The Board agrees that the narrative mentions training in automated case management and general legal and administrative areas. The application does not, however, do more than merely mention such training. Even if appellant were not able to provide exact dates and titles of courses, the Board does not believe the Director abused her discretion in requiring more detailed information concerning the types of courses appellant believed were needed.

The Director stated that the application did not address the project's benefit to the community. Appellant replies that the benefit to the community is addressed in several places throughout its application.

Part III(A)(2)(a) of the program announcement states that “[a]pplicants should respond to the evaluation criteria enumerated in Part IV of the announcement.” Part IV(G)(b) provides that reviewers are to comment on and score applications according to whether “the application specif[ies] how the expected results will directly and tangibly benefit the judiciary, the community, or a specific population.”

The reviewers' comments show that only one panel member was concerned that appellant had failed to show benefit to the community. That reviewer's comment states: "Appears the computerization and updated codes and protocol will significantly assist the judicial staff. However, no mention is made as to the impact on the community. Will it be easier for tribal members to file claims?" The Board interprets the program announcement's use of the word "or" to mean that an applicant must show benefit to at least one of the three identified groups. Although it might be reasonable to rate an application that showed benefit to all three groups higher than one which showed benefit to only one, the reviewer's comment does not indicate that such weighing was being done here, and the program announcement does not state that the number of groups benefited would be considered. Cf. Pyramid Lake Paiute Tribe v. Acting Phoenix Area Director, 22 IBIA 297, 298 and n.1 (1992) (regarding meeting of conditions connected by "and/or" under the FY 1992 Planning Grant program). Furthermore, the ease of filing claims is not the only possible benefit to the community, as is suggested by the comment. The same updated codes that are of benefit to the judiciary are also of benefit to the people who would be held accountable under them.

The Board concludes that undue weight may have been given to the comment concerning failure to mention benefit to the community. Accordingly, it finds that appellant's application should be reconsidered in this area.

The Director indicated that the application would be strengthened by commitment or support letters. Appellant responds that commitment and support letters were included in the application. The application included three commitment and support letters, provided by the Taos Pueblo Department of Social Services, the Southwest Intertribal Court of Appeals, and the Taos Pueblo Probation Officer.

The program announcement addresses support letters in several places. Part III(B) (8) provides that "[l]etters of commitment and/or cooperation from institutions, organizations, or service providers who will participate in the proposed project" are to be the last section of the application. Part IV(E) (6) states that "applicants are encouraged to include letters endorsing or supporting the proposed project which are specific and/or verify tangible commitments to the project, e.g., staff, facilities, training." Part IV(G) (c) indicates that applications will be evaluated on whether "the applicant [has] identified and secured the commitment of each of the key cooperating organizations, groups, and individuals who will work on the project and provided an adequate description of the nature of their effort or contribution."

A review of the comments provided by the panel members reveals that they were concerned that appellant had not provided a letter of support specifically from the Indian Health Service. Appellant's application states at page 1: "The goals and objectives of this proposal are: * * * to draft protocols for disposition alternatives which would involve the state, tribal, PHS/IHS [Public Health Service/Indian Health Service], and Taos County service providers." The application thus indicated that Tribal, County, State, and Federal governments would all be involved in appellant's efforts. The application included letters of support only from Tribal government service

providers. It would be reasonable for the Director to conclude that appellant had not "identified and secured the commitment of each of the key cooperating organizations, groups, and individuals."

The Board is, however, unable to determine whether appellant's application was rated lower because it did not include support letters from all or most potential service providers, or because it was believed that no support letters were included. The statement in the Director's denial letter might indicate the latter. Therefore, the Director should also readdress this particular issue on remand.

The Director stated that appellant's budget indicated the project would be completed in 165 days, while the work plans called for 120 days to complete the codes and 150 days to complete the protocols. Appellant responds that the times indicated in the work plans were estimates.

The Board believes that appellant's application was misunderstood in this area. The 165 days, or 33 weeks, mentioned in the budget justification appear to refer to the actual time the Tribal Court Judge will spend working on the codes and protocols. The 120 and 150 days mentioned in the narrative appear to refer to calendar days estimated to complete the work. The reference to both calendar days and actual working days may have resulted in confusion. The Board concludes that the Director should reconsider this issue on remand.

The Board has found that, in reaching her decision, the Director erred, or may have erred, in the areas of benefit to the community, letters of support, and work schedule. The Board is unable to determine from the administrative record whether appellant's application would have been approved, but for these errors or possible errors, especially considering how close appellant's score was to the cut-off level. Therefore, the Director's decision must be vacated, and this matter remanded to her for a redetermination of whether appellant's application should be approved or denied.

The parties are reminded that the Director's decision on remand, if it again denies appellant's application, is also appealable to the Board.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Director's February 15, 1994, decision is vacated, and this matter is remanded to her for further consideration.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

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Anita Vogt
Administrative Judge