



INTERIOR BOARD OF INDIAN APPEALS

South Puget Intertribal Planning Agency v. Acting Portland Area Director,  
Bureau of Indian Affairs

27 IBIA 236 (03/15/1995)



# United States Department of the Interior

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

SOUTH PUGET INTERTRIBAL PLANNING AGENCY, Appellant	:	Order Affirming Decision
	:	
	:	
	:	
v.	:	Docket No. IBIA 94-166-A
ACTING PORTLAND AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	March 15, 1995

This is an appeal from a July 14, 1994, decision of the Acting Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to accept and review appellant's application for a FY 1994 Indian Child Welfare Act (ICWA) grant as an off-reservation organization. For the reasons discussed below, the Board affirms the Area Director's decision.

Appellant submitted its application on June 30, 1994, pursuant to a notice of availability of funds published in the Federal Register, 59 FR 25542 (May 16, 1994). In a letter dated July 14, 1994, the Area Director stated:

Your application cannot be accepted since your organization is an intertribal consortium formed by the Skokomish, Squaxin Island, Chehalis, Shoalwater Bay and Nisqually tribes. The Federal Register Notice dated May 16, 1994, under Part I. - General Information, Section B, Eligible Applicants states:

"An applicant may not submit more than one application nor be a beneficiary of more than one grant under this or other prior notices."

All your consortium members have already received individual allotments under the Title II [ICWA] notice published March 25, 1994. Accepting your application will cause the Bureau to break its own regulations that prohibit tribes from submitting more than one application and/or benefiting from more than one grant. Your application also did not contain resolutions from the member tribes, although it did contain a resolution from the Board of Directors.

(Area Director's July 14, 1994, Decision at 1).

On appeal to the Board, appellant contends that it meets the eligibility requirements for an off-reservation ICWA grant. It states that it "has a relationship with the five mentioned tribes while being a separate entity," and continues:

We hold our own 501(c)3, IRS tax exemption certificate and employer identification number, and are governed by a separate board of directors. \* \* \*

\* \* \* \* \*

[T]he five mentioned tribes have developed their own proposals, statements of work, and multi-year plans based on their individually assessed needs. [Appellant] has submitted a proposal based on Indian client needs which are not being met by tribal programs. \* \* \*

There are no duplication of services being offered nor are there any supplanting of funds which may lead to [appellant] benefiting from more than one grant.

Additionally, our application did not contain resolutions from the five tribes and did contain one from our board of directors because it is [appellant] applying for off-reservation grant monies and not tribal governments.

(Notice of Appeal at 2).

Part I, section B, of the May 16, 1994, program notice states: "The Board of directors of any nonprofit off-reservation Indian organization may apply for a grant under this announcement. \* \* \* An applicant may not submit more than one application nor be a beneficiary of more than one grant under this or other prior notices."

A prior notice of fund availability under the ICWA grant program was published on March 25, 1994, 59 FR 14310. Under that notice, funds were made available to Indian tribes on a noncompetitive basis. <sup>1/</sup> Part I, section B, of that notice states:

The governing body of any federally recognized Indian tribe or tribes may apply individually or as a consortium for a grant under this announcement. A consortium is created by an agreement or association between two or more eligible applicants. Under a consortium application, each eligible consortium applicant (tribe) must identify the amount of ICWA funds for which it is eligible. An applicant may not submit more than one application nor be the beneficiary of more than one grant under this grant announcement.

The Area Director's decision indicates that he considered appellant to be a tribal consortium which, but for the fact that its member tribes had applied for grants individually, would have been eligible for a grant under the tribal program. The term "consortium" is defined at 25 CFR 23.2 as

---

<sup>1/</sup> The division of the ICWA grant program into two parts--a noncompetitive program for tribes and a competitive program for off-reservation Indian organizations--was a significant feature of the 1994 revision of 25 CFR Part 23. See 59 FR 2248 (Jan. 13, 1994).

"an association or partnership of two or more eligible applicants who enter into an agreement to administer a grant program and to provide services under the grant to Indian residents in a specific geographical area when it is administratively feasible to provide an adequate level of services within the area."

The term "off-reservation Indian organization," per se, is not defined in the regulations. However, 25 CFR 23.2 provides: "Indian organization, solely for the purposes of eligibility for grants under subpart D of this part [concerning grants to off-reservation Indian organizations], means any legally established group, association, partnership, corporation, or other legal entity which is owned or controlled by Indians, or a majority (51 percent or more) of whose members are Indians." 25 CFR 23.32, entitled "Purpose of off-reservation grants," authorizes the Secretary "to make grants to off-reservation Indian organizations to establish and operate off-reservation Indian child and family service programs." 25 CFR 23.2 defines the term "off - reservation ICWA program" as "an ICWA program administered in accordance with 25 U.S.C. 1932 by an off-reservation Indian organization." 25 U.S.C. 9 1932 (1988) provides: "The Secretary is authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs." 2/

When read together, these provisions convey the sense that the critical characteristic of an off-reservation Indian organization is that it operates an off-reservation Indian child and family service program. Although the term also suggests that such an organization is actually located off-reservation, there is no explicit requirement in this regard, and the Board declines to read such a requirement into the regulatory and notice provisions. The Board finds, therefore, that even though appellant's offices are located on the Squaxin Island Reservation (Appellant's Grant Application at 19), that fact does not, in itself, disqualify appellant as an off-reservation Indian organization.

However, appellant's application fails to demonstrate that its program is an off-reservation program. To the contrary, its description of its program indicates that its service population consists of the members of the five tribes within the five-reservation area. Absent some evidence to the contrary, it is reasonable to assume that a significant number of those members live on-reservation and/or within the tribes, normal service areas.

Appellant's application states at page 1:

[Appellant] is an intertribal consortium formed in 1976 by the member Tribes to provide human service delivery, planning, and technical assistance services as part of the Tribes' community development efforts. [Appellant] presently operates over 30 programs on behalf of the Tribes \* \* \*. [Appellant] has played a

---

2/ "Reservation" is defined in 25 CFR 23.2 as "Indian country as defined in 18 U.S.C. 1151 and any lands not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation."

major role in child and family services program development efforts within the five Tribes through its service delivery, technical assistance, and planning efforts in this area. [Appellant] has undergone a period of tremendous growth within the past two years, having doubled both its budget and the number of programs it operates on behalf of the member Tribes.

Not only does this statement indicate that appellant's programs are essentially tribal programs, it even concedes the conclusion reached by the Area Director--that appellant is a tribal consortium.

In a competitive grant program, it is the applicant's responsibility to demonstrate in its application that it meets the eligibility requirements of the program under which it is applying. See, e.g., Fort Sill Apache Tribe v. Anadarko Area Director, 24 IBIA 190 (1993). Appellant did not do so in this case. The Board therefore affirms the Area Director's decision insofar as it held that appellant is a tribal consortium.

The Area Director also found that appellant's application could not be considered because of the provision in the May 16, 1994, notice which precludes an applicant from submitting or benefitting from more than one application. Appellant contends that, because there will be no duplication of services or "supplanting" of funds, it will not benefit from more than one grant. The Board construes this contention as a contention that appellant would not receive any of the grant funds awarded to the five tribes.

The Area Director's decision states that BIA regulations "prohibit tribes from submitting more than one application and/or benefitting from more than one grant." This is a somewhat overbroad statement of the regulatory and notice provisions. 25 CFR 23.21(b) provides: "A tribe may neither submit more than one application for a grant nor be the beneficiary of more than one grant under this subpart [i.e., subpart C, concerning noncompetitive tribal government grants]" (emphasis added). The March 25, 1994, notice similarly precludes tribes from submitting more than one application or being "the beneficiary of more than one grant under this announcement" (emphasis added). Grants to off-reservation Indian organizations are not made under subpart C of 25 CFR Part 23. Rather, they are made under subpart D. With respect to the FY 1994 grant program, grants to off-reservation Indian organizations were not made under the March 25, 1994, notice, but under a separate notice published on May 16, 1994. Thus, there seems to be nothing which would preclude a tribe from benefitting from a grant to an off-reservation tribal organization.

In contrast, an off-reservation Indian organization is precluded from benefitting from a grant to a tribe. This is evident from the May 16, 1994, notice, which provides that an applicant may not be "a beneficiary of more than one grant under this or other prior notices" (emphasis added). Thus, assuming arguendo that, contrary to the Board's conclusion above, appellant were an off-reservation Indian organization, the question would not be whether the five tribes would benefit from a grant to appellant but, as appellant perceives, whether appellant would benefit from the grants awarded to the tribes.

Because it has already found that appellant did not demonstrate its eligibility as an off-reservation Indian organization, the Board need not reach this issue. It notes, however, that even if appellant had established that it was an off-reservation Indian organization, the Area Director might properly have rejected its application on the basis that it failed to clearly demonstrate that it would not benefit from the grants awarded to the tribes. 25 CFR 23.21(b)(4) permits tribes to make subgrants to Indian organizations. Given the nature of appellant's programs, it was not inconceivable that the tribes would subgrant portions of their grants to appellant. Nothing in appellant's application made it clear that appellant would not receive subgrants from the tribes or otherwise benefit from the tribal grants. It was appellant's responsibility to demonstrate, in its application, that it would not receive such benefits. It did not do so. <sup>3/</sup>

Therefore, 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 July 14, 1994, decision is affirmed.

\_\_\_\_\_  
//original signed  
Anita Vogt  
Administrative Judge

\_\_\_\_\_  
//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

---

<sup>3/</sup> It was also appellant's responsibility to include all required documents with its application. The record copy of appellant's application lacked several of the documents described as mandatory in Part III, section C, of the May 16, 1994, notice. Thus, even if the Area Director had not rejected appellant's application for the reason he did, he would have been compelled to reject it for failure to include mandatory information. E.g., Minneapolis American Indian Center v. Minneapolis Area Director, 26 IBIA 210 (1994); Milwaukee Indian Health Board, Inc. v. Minneapolis Area Director, 26 IBIA 242 (1994).

Appellant submitted additional documents with its appeal to the Board. However, even if the Board had reached this issue, it could not have considered these documents. E.g., Native American Service Agency v. Eastern Area Director, 26 IBIA 186 (1994).