



INTERIOR BOARD OF INDIAN APPEALS

The Catawba Indian Nation v. Eastern Regional Director, Bureau of Indian Affairs

44 IBIA 106 (01/23/2007)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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THE CATAWBA INDIAN NATION, : Order Dismissing Appeal
Appellant, :
 :
v. : Docket No. IBIA 07-63-A
 :
EASTERN REGIONAL DIRECTOR, :
BUREAU OF INDIAN AFFAIRS, :
Appellee. : January 23, 2007

On January 17, 2007, the Board of Indian Appeals (Board) received a notice of appeal from The Catawba Indian Nation (Nation), through Chief Gilbert Blue, appealing a December 19, 2006, decision of the Eastern Regional Director, Bureau of Indian Affairs (BIA). The December 19 decision notified the Nation that BIA declined to approve the Nation's Consolidated Tribal Government contract under the Indian Self-Determination Act (ISDA), 25 U.S.C. §§ 450–450n, because of the Nation's failure to produce an audit for the years 1996 through 2003. For the reasons discussed below, the Board dismisses this appeal as premature.

On January 19, 2007, the Board received from BIA a copy of a January 16, 2007 request from the Nation to BIA for an informal conference, pursuant to 25 C.F.R. § 900.154, concerning the declination. Under the ISDA regulations, when an agency issues a decision declining to approve a contract, the agency is required to advise the contracting tribe of the tribe's right to "request an informal conference under 25 CFR 900.154, *or* appeal [the] decision under 25 CFR 900.158 to the Interior Board of Indian Appeals." 25 C.F.R. § 900.152 (emphasis added). An informal conference is "a way to resolve issues as quickly as possible, without the need for a formal hearing." *Id.* § 900.153. An informal conference is conducted by a designated representative for the Secretary, who must prepare a written report and recommended decision at the conclusion of the informal conference. *Id.* § 900.156. If the Nation is dissatisfied with the recommended decision, it may still appeal the initial decision to the Board, and does not lose any right it has to a hearing on the record. *Id.* §§ 900.156–900.158; see also Thlopthlocco Tribal Town v. Eastern Oklahoma Regional Awarding Official, 40 IBIA 144 (2004).

In the present case, the Nation has requested an informal conference to attempt to resolve the dispute. The regulations, however, do not authorize tribes to request an informal conference and simultaneously file an appeal with the Board. See 25 C.F.R. § 900.152 (tribe may either request an informal conference “or” immediately appeal to the Board). Because the informal conference procedures are designed to avoid the necessity of a formal hearing, the regulations clearly anticipate that, when requested, an informal conference will precede any appeal to the Board. Thlopthlocco Tribal Town, supra. Thus, given the Nation’s request for an informal conference pursuant to § 900.154, the Board concludes that the Nation’s appeal to the Board is premature. The Nation’s right to appeal the initial decision remains fully protected and will ripen after the informal conference has concluded and the designated representative has written the requisite report and recommended decision. See 25 C.F.R. § 900.157.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board dismisses this appeal as premature.

I concur:

// original signed
Debora G. Luther
Administrative Judge

// original signed
Steven. K. Linscheid
Chief Administrative Judge