PAIUTE INDIAN TRIBE OF UTAH,	:	Order Vacating Decision and
Appellant	:	Remanding Case
	:	
v.	:	
	:	Docket No. IBIA 92-184-A
ACTING PHOENIX AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	September 21, 1992

This is an appeal from an April 28, 1992, decision of the Acting Phoenix Area Director, Bureau of Indian Affairs (Area Director; BIA), denying appellant's application for a FY 1992 Planning Grant. For the reasons discussed below, the Board vacates the Area Director's decision and remands this case to him for further consideration.

The availability of funding for the FY 1992 Planning Grant Program was announced in the Federal Register on January 2, 1992. 57 FR 160. Appellant submitted an application pursuant to that announcement. By letter dated April 28, 1992, the Area Director informed appellant that its "application did not rank high enough among the twelve tribal applications received to be considered for a grant under the terms of the announcement." The Area Director's letter continued:

> The application was weak or deficient in these areas:
>
> Under (2) eligibility criteria, of the announcement, there was no documentation to the following:
>
> (a) Have no significant or material audit exceptions noted in any and all current cost audits, and/or the current OMB Circular A-128 organization-wide single audit report.
>
> (b) That the Tribe has successfully administered other developmental projects, and has done so without governmental or political interference.

(Area Director's Letter at 1).

The first weakness identified by the Area Director, relating to audit exceptions, concerns one of the eligibility criteria listed in section C of the Federal Register announcement--specifically, the one listed in subsection C(2)(a)(ii). It clearly appears from an audit report included with appellant's original application, a copy of which was submitted by appellant in this appeal, that there was a question as to whether appellant had expended certain Federal grant funds in violation of the terms of the

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grant. The Board finds that the Area Director reasonably concluded, in light of that report, that appellant was weak or deficient as to the criterion in subsection C(2)(a)(ii).

The second weakness identified by the Area Director concerns one of three conditions listed in subsection C(2)(b) of the Federal Register announcement. Subsection C(2)(b) required that, for certain planning grants, tribes must satisfy one or more of the three conditions listed. It did not require that tribes satisfy all three conditions. The rating sheets for appellant's application shows that appellant satisfied two of the three conditions. In Pyramid Lake Paiute Tribe v. Acting Phoenix Area Director, 22 IBIA 297 (1992), the Board held that it was error for the Area Director to conclude that an application was weak or deficient because it failed to satisfy all three conditions in subsection C(2)(b). See Pyramid Lake Paiute Tribe for further discussion.

The Board holds that the Area Director's second reason for finding appellant's application weak or deficient was improper. The Board is unable to determine from the administrative record whether appellant's application would have been approved, but for consideration of the invalid second reason. The Area Director's decision must be vacated, and this matter remanded to him for a determination of whether, without consideration of the invalid second reason, appellant's application would have been approved or denied. If he concludes that appellant's application would have been approved, the Area Director shall further determine an appropriate remedy, if, as the Board assumes, funds for the FY 1992 Planning Grant program have all been distributed.

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 decision is vacated, and this matter is remanded to him for further consideration in accordance with this opinion. 1/

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge

1/ Appellant argued in its notice of appeal that the denial letter should have informed it of the points it received for each rating category and of the overall ranking of all applicants. It contends that it needs this information in order to improve its application for next year. The information appellant seeks is included in the administrative record for this appeal. If appellant does not yet have copies of this information, it should request copies from the Area Director.

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