FORT McDERMITT PAIUTE-SHOSHONE TRIBE, Appellant	:	Order Affirming Decision
v.	:	Docket No. IBIA 94-148-A
ACTING PHOENIX AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	December 13, 1994

This is an appeal from a May 13, 1994, decision of the Acting Phoenix Area Director, Bureau of Indian Affairs (Area Director; BIA), denying an application for a FY 1994 Training and Technical Assistance grant. For the reasons discussed below, the Board affirms the Area Director's decision.

Pursuant to an announcement of the availability of funding published in the Federal Register, 58 FR 68702 (Dec. 28, 1993), appellant applied for a FY 1994 Training and Technical Assistance grant. On May 13, 1994, the Area Director informed appellant that its application was deemed ineligible for funding because it failed to meet the eligibility criteria in Part B(2) of the program announcement.

On appeal to the Board, appellant raises a number of arguments. It first contends that the Board should rule in appellant's favor because the Area Director was late in submitting the administrative record. Although the Board expects administrative records to be submitted in a timely manner, it does not decide the merits of an appeal on the basis of a delay in submission of the record. 1/

Next, appellant contends that any weaknesses in its application were the fault of BIA because the Western Nevada Agency, BIA, provided appellant with technical assistance in preparing its application. The Board has held that, although technical assistance is intended to provide an applicant with an advance indication of problems with its application, it does not guarantee that the application will be funded. E.g., Washoe Tribe v. Acting Phoenix Area Director, 19 IBIA 190 (1991).

Appellant contends tha the Area Director's decision is "consistent with a pattern of non-cooperation and exclusion evinced by BIA at the Area and Agency levels towards the Tribe; and that this pattern is based upon personalities and prejudices" (Appellant's Opening Brief at 2). Despite

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1/ The Board notes that appellant must also bear some responsibility for delay in this appeal, having failed to serve its opening brief on the Area Director as instructed in the notice of docketing.

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this assertion, however, appellant presents no evidence that the Area Director's decision was the result of bias on the part of BIA. A mere assertion of bias is inadequate to prove that bias was present in fact.

Appellant contends that the Area Director found its application acceptable in all respects other than compliance with the eligibility criteria in Part B(2) and that, therefore, it is entitled to have its application funded if the Board finds that the application meets the eligibility criteria. Appellant appears to misunderstand the nature of the eligibility criteria, as well as the nature of this competitive grant program. If appellant's application had been determined eligible, it would have been entitled to compete with other applications, not necessarily to be funded. Only if it had scored high enough vis-a-vis its competitors would it have been funded. Further, there is no basis for appellant's assumption that the Area Director found its application acceptable except with respect to the eligibility criteria. It is apparent that BIA did not review appellant's application further once it had determined that the application failed to meet the eligibility criteria. Therefore, even if the Board were to hold that appellant's application should have been found eligible, it would not order that the application be funded but would instead remand the matter to the Area Director with a requirement that the application be rated.

Appellant contends that the Superintendent's transmittal memorandum, which stated that appellant's application included all necessary information and documents, is sufficient for a finding that the application met the eligibility criteria. Section B(6)(a)(ii) requires that the Area Director review the application for, inter alia, compliance with the eligibility criteria. The section further requires that the Area Director utilize the Superintendent's comments and recommendations. There would be no point in requiring the Area Director to conduct this review if he were compelled to accept the Superintendent's comments and recommendations in all cases. The Board finds that the Area Director was not precluded from disagreeing with the Superintendent's conclusion that an application included all necessary information and documents.

With respect to the specific eligibility criteria for Training and Technical Assistance grants, Part B(2) provides that a tribe "must be able to document and/or demonstrate its needs utilizing five (5) or more of [certain] identifying conditions or criteria." The criteria are listed in sections B(2)(a) through (h). The Area Office found appellant's application lacking in documentation to support eligibility criteria (d) through (h).

Criterion (d) requires that a tribe show that it "is unable to accomplish current or past grant/contract objectives and/or is not capable of preparing successful grant/contract applications." Appellant contends that it documented compliance with this criterion by stating that its current Training and Technical Assistance grant required modification in order to meet grant objectives. Appellant states that it did not include a copy of its current grant with its application because BIA administered the grant.

Criterion (e) requires that a tribe show that it "is not able to operate properly under its management systems although the systems have been approved as satisfying regulatory requirements." Appellant contends that it

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complied with this criterion by referencing several specific needs within its management system.

Criterion (f) requires that a tribe show that "[t]he tribal government has little or not control over its various program operations, thus no control over program delivery, and cost overruns, etc." Appellant contends that it complied with this criterion by referencing political factionalism and the inadequacy of management systems as primary causes for tribal lack of control over its program operations.

Criterion (g) requires that a tribe show that "[t]he tribal government needs help but is in such a state that it is unable to indicate the type or amount of assistance needed." Appellant contends that it complied with this criterion by agreeing with the context of the statement.

Criterion (h) requires that a tribe show that "[t]he tribal government is experiencing serious internal strife and the tribe is paralyzed with political factionalism which results in the deterioration of its government as well as its program or service delivery systems." Appellant contends that it complied with this criterion by describing its political environment as it existed in December 1993. Appellant further contends that BIA was aware of the problems and had been involved in them.

Appellant's application does indeed make the statements appellant describes. They are only statements, however, and lack supporting documentation. It was the failure to provide documentation that led the Area Director to conclude that appellant's application failed to demonstrate eligibility. Appellant appears to believe that, in cases where BIA had some previous involvement with the matters it referred to in it application, it was BIA's responsibility to search out the supporting documentation in its files. This is not the case. It was appellant's responsibility to demonstrate, in its application, that it was eligible for the grant for which it was applying. E.g., Fort Sill Apache Tribe v. Anadarko Area Director, 24 IBIA 190 (1993).

The Board finds that the Area Director reasonably concluded that apellant failed to document and/or demonstrate its eligibility in its application. 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 May 13, 1994, decision is affirmed. 2/

Anita Vogt Administrative Judge	Kathryn A. Lynn Chief Administrative Judge

2/ All arguments not specifically addressed in this decision have been considered and rejected.

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