CHILKOOT INDIAN ASSOCIATION,	:	Order Affirming Decisions
HOONAH INDIAN ASSOCIATION,	:	
WRANGELL COOPERATIVE	:	
ASSOCIATION, and CRAIG	:	
COMMUNITY ASSOCIATION,	:	
Appellants	:	Docket Nos. IBIA 94-139-A
	:	IBIA 94-140-A
v.	:	IBIA 94-142-A
	:	IBIA 94-143-A
ACTING JUNEAU AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	March 3, 1995

Appellants Chilkoot Indian Association, Hoonah Indian Association, Wrangell Cooperative Association, and Craig Community Association sought review of separate decisions issued on May 6, 1994, by the Acting Juneau Area Director, Bureau of Indian Affairs (Area Director; BIA) , declining each appellant's application for a FY 1994 Small Tribes grant. 1/ For the reasons dicussed below, the Board of Indian Appeals (Board) affirms those decisions.

Pursuant to an announcement published at 58 FR 68696 (Dec. 28, 1993), each appellant submitted an application for a Small Tribes grant, Developmental component, to the Juneau Area Office. Each application was received by the Area Office on February 28, 1994, the last day for filing applications. Chilkoot's application sought $34,600, and each of the other three applications sought $35,000, principally for the purchase of computer hardware and software, and training and technical assistance, all to be provided by the Central Council of Tlingit and Haida Indian Tribes of Alaska (Central Council) and its subsidiary, the Indian Software Company. 2/

The applications were reviewed by three-member rating panels consisting of at least one BIA employee and one tribal representative. By letters dated May 6, 1994, the Area Director declined to fund the applications. He stated that the Juneau Area allocation for the Small Tribes program had been $590,000, and that the Area had received applications from 110 tribes. Based

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1/ In their opening briefs, each appellant inadvertently stated that it had applied for FY 1995 funds.

2/ The breakdown of contractual costs for Chilkoot, Hoonah, and Craig was: equipment, $5,307; software, $4,750; technical services, $5,275; and training, $14,668. The breakdown of contractual costs for Wrangell's application was: software, $4,750; technical services, $5,275; and training, $14,670. Each appellant also sought additional funds for office rent, salaries, etc.

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on the competitive rating of the applications, the Area Director indicated that the lowest score of any application funded was 89. He informed appellants that their scores had been: Chilkoot--79; Hoonah--77.67; Wrangell--76.33; Craig--78.

After appealing to the Board, each appellant moved to consolidate its appeal with seven other appeals. 3/ The Board declined to consolidate the appeals, stating that, although similar issues might be raised in each of the cases, there were obvious differences between them, and "consolidation will not allow clear delineation of those areas which are similar and those which are not." Appellants subsequently filed individual briefs. The Area Director did not file an answer brief in any appeal. 4/

Appellants here raise many of the same arguments as the appellants in Allakaket. The Board incorporates the discussion in Allakaket into this order. The arguments not here addressed are: (1) the standard of review, (2) appellants' proposed use of a consultant, (3) allegedly excessive costs, (4) bias against appellants because the consultant they proposed to use was the Central Council, (5) reductions to Wrangell's score because of missing items, (6) the reviewers' alleged misunderstanding of the proposed projects, and (7) alleged lack of expertise in the village to use the technology to be acquired.

Appellants raise two new arguments. Based on a sentence in a document entitled "Review and Scoring Process: Small Tribes Grant Program F.Y. 1994" which stated that the review teams would be so constituted "that no application [would be] assigned to a team where a member might be perceived to have a conflict (tribal member or [BIA] agency staff covering applicant's area)," appellants assert that their applications were not fairly and impartially reviewed because they were reviewed by Andrew Hope, whom they identify as "a tribal operations staff person with responsibilities for Southeast Alaska tribal governments" and allege is "bias[ed] against [the Central Council], against Self-Governance, and against the Southeast Tribes who have chosen to compact for programs" (Chilkoot's Opening Brief at 16). 5/

The Board has carefully reviewed the comment sheets for each appellant in these appeals as well as those for the appellants in Allakaket. The "Agency General Comment" sheet for each appellant in Allakaket was signed

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3/ In addition to the appeals addressed in this order, the other appeals for which consolidation was sought are identified and addressed in Allakaket Village Council v. Acting Juneau Area Director, 27 IBIA 190 (1995).
4/ The Central Council filed a motion to intervene. The Board denied this motion, concluding that the interests of the Central Council could be adequately represented by the appellants, especially considering the fact that counsel for the appellants also represents the Central Council.
5/ When identical or substantially similar arguments are made by more than one appellant, the Board will cite only one brief.

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by three individuals, apparently the three reviewers. For the present appellants, that sheet was signed only by Hope. The Board does not know the reason for this difference.

The Board has also compared the handwriting on the "Agency General Comment" sheets for present appellants with that on each of the rating sheets prepared by the individual reviewers. Although the Board does not claim to be expert in handwriting analysis, even an untutored person can plainly see that Hope's handwriting does not in the least resemble the handwriting of any of the three reviewers. However, Hope's handwriting appears identical to the handwriting of the person completing the eligibility checklists for each appellant. Without some evidence beyond the signature on the Agency General Comment sheet, the Board declines to conclude that Hope was one of the three reviewers for appellants' applications. Instead, it appears that Hope was performing the functions assigned to the Agency Office in the announcement by making a preliminary determination of the eligibility of the applicants.

There is no evidence that the reviewers saw Hope's comments, which concern the participation of each appellant in the Southeast Alaska Self-Governance compact and indicate that the Central Council already receives funding under the compact for each appellant. However, assuming that they did, the comments could have influenced the reviewers. The Board examined the reviewers' comments to determine if there was any evidence of such influence. On the general comment sheet, the reviewer who gave the lowest scores to Chilkoot and Craig mentioned a "compact," presumably the southeast Alaska Self-Governance compact. The reviewer giving the lowest scores to Wrangell and Hoonah questioned whether the Small Tribes program was the appropriate source for funding these particular projects. However, in each case, the low scores given to the application were fully supported by comments not pertaining to the compact that were made under each of the five review categories. The Board concludes that there is no evidence that appellants were prejudiced by Hope's comments. 6/

Appellants object to the review process as outlined in the Review and Rating Process document, under which, after individual review of each application, the team "discuss[ed] their individual findings and tentative scores among themselves; following which each member would give a final score." Appellants contend that this "coordination * * * is patently unfair, and should not be encouraged by the BIA" because it would allow a biased "individual to influence the other members of the reviewing group to also give low scores * * * [and would] magnify the impact of erroneous and inappropriate criteria and swing scores to the low end of the scale on the basis of one bad judgment." (Chilkoot's Opening Brief at 17).

Appellants cite the large disparity in the range of their individual scores as further evidence of bias against them. The range of scores was:

6/ Because of this finding, the Board does not address appellants' substantive arguments about either the comments or Hope's alleged bias.

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Chilkoot--62, 80, and 95; Hoonah--58, 80, and 95; Wrangell--55, 80, and 94; and Craig--59, 80, and 95.

Appellants' argument initially appears to assume that Hope was the reviewer who rated each of their applications the lowest. The Board has declined to conclude that Hope was one of the reviewers. Wrangell makes a generalized allegation of bias against the reviewer giving it the lowest score. Chilkoot alleges bias by one reviewer because that reviewer changed the score given under the Management or Self-Monitoring system category from 15 out of 15 to 10 out of 15. Chilkoot contends: "It appears that the reviewer originally determined that this category was satisfied fully, and then, when he/she decided to lower the total score, he/she created a criticism to justify the reduction. This change appears random and undeserved, further evidencing the charge that the review was conducted in a biased fashion" (Chilkoot's Opening Brief at 20, n.5). The Board does not accept Chilkoot's interpretation. The change is also consistent with the reviewer rereading the monitoring section and deciding that his/her first impression was incorrect. The Board finds no basis on which to conclude that any one of the reviewers was biased against appellants. Because it finds no evidence of individual bias, the Board rejects appellants' contentions that their scores were improperly influenced by such bias through the review procedures.

Furthermore, the disparity in scores tends to disprove appellants' argument. If one reviewer had influenced the others, logically the scores would have been closer together. The divergence of scores appears to suggest that the reviewers were in basic disagreement about the merits of the applications both before and after team consultation.

The Board considered a case with similarly divergent scores in Colville Confederated Tribes v. Acting Portland Area Director, 27 IBIA 24 (1994). In that case, which sought a FY 1994 Planning grant, the scoring range was 90, 88, 80, and 50. 7/ The Board stated in a footnote:

> Disparities among reviewers are likely to be greater where, as here, reviewers are prohibited from discussing the scoring with other reviewers and where the reviewers' scores are simply added together to arrive at a total score for each application.
>
> It is possible to reduce disparities by employing different review methodologies. In BIA's FY 1994 Tribal Court grant program, for instance, the review panels were required to reach consensus on an applicant's score within a certain number of points.

7/ See also Stillaguamish Tribe v. Acting Portland Area Director, 27 IBIA 37 (1994), involving an application for a FY 1994 Small Tribes grant, in which the scoring range was 90, 94, 40, 82, and 60.

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> There are, of course, advantages and disadvantages to both approaches. The Board is unwilling to conclude that the approach employed by the Area Director was unreasonable.

(27 IBIA at 26, n.2). Although these cases present a third methodology in which the reviewers were encouraged to discuss their findings and scores, but were not required to reach any kind of consensus, appellants' arguments against this methodology are unpersuasive.

Chilkoot also objects to one reviewer's comment that it should have applied under the Basic component rather than the Developmental component. Chilkoot maintains that if it had applied under the Basic component, it would have had no chance for success because the Basic component does not allow for hiring consultants or purchasing equipment.

The entire comment to which Chilkoot apparently refers appears on one reviewer's general comment sheet and states: "relevance of delinquent in past 104 (A) grants Basic Small Tribes?" Without some additional context, the Board is unable to understand this comment. However, nothing in the reviewer's comments under the five review categories suggests that the reviewer reduced Chilkoot's scores an the grounds that it should have applied under a different program component

The remaining arguments deal with the individual scores given to each application. Most of the arguments raised relate to issues already discussed. In essence, appellants contend they should have received perfect or nearly perfect scores. Part of this argument is based on the fact that some reviewers did not provide comments under each review category. In Colville, 27 IBIA at 26, the Board agreed that comments should be provided. However, as in Colville, the Board concludes that the failure of the reviewers to provide comments under each review category is not enough to require that the Area Director's decision be vacated.

The Board has carefully reviewed appellants' arguments as to why their scores should be higher, but finds no basis for requiring that the scores be reconsidered.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Juneau Area Director's May 6, 1994, decisions are affirmed. 8/

Kathryn A. Lynn Chief Administrative Judge	Anita Vogt Administrative Judge

8/ Arguments not specifically addressed were considered and rejected.

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