



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION FOR RECONSIDERATION DENIED: April 14, 2014

CBCA 3519-ISDA-R

YUROK TRIBE,

Appellant,

v.

DEPARTMENT OF THE INTERIOR,

Respondent.

Raymond Calamaro, Douglas Wheeler, and Audrey Moog of Hogan Lovells US LLP, Washington, DC, counsel for Appellant.

Rebekah Krispinsky, Office of the Solicitor, Department of the Interior, Washington, DC, counsel for Respondent.

Before Board Judges **DANIELS** (Chairman), **SOMERS**, and **VERGILIO**.

DANIELS, Board Judge.

The Yurok Tribe (Tribe) appealed from the deemed denial by the Department of the Interior's Bureau of Indian Affairs (BIA) of a claim for payment under a contract between the two parties. We dismissed the case for failure to state a claim upon which relief may be granted. In so doing, we rejected the Tribe's theory that because it had requested a contract under Title I of the Indian Self Determination and Education Assistance Act (ISDA) and the Secretary of the Interior had not declined the request, the contract had come into being by operation of law. We concluded, for two reasons, that no such contract had ever been created. First, we found, based on uncontested facts, that the Tribe had not made clear that its "letter of interest" was a request for a Title I contract. Second, we held that because such

a contract is for the purpose of transferring to a tribe the responsibility and funds for conducting programs, functions, services, or activities which a federal agency had been performing for that tribe, and BIA had been performing for this Tribe none of the programs, functions, services, or activities which were addressed in the Tribe's request, no such contract could have been formed. *Yurok Tribe v. Department of the Interior*, CBCA 3519-ISDA, 14-1 BCA ¶ 35,528.

The Tribe moves us to reconsider this decision. In the motion, the Tribe maintains that because BIA's motion to dismiss was for lack of jurisdiction, and the Board concluded that the Tribe's assertion of a contract precluded a grant of such a motion, the Board should not have proceeded to dismiss the case for failure to state a claim. The Tribe also maintains that the Board erred by resolving disputed factual issues, rather than accepting as true the factual allegations made by the Tribe.

We deny the motion for reconsideration. As to the first of our reasons, we do not believe that we resolved any factual disputes. It is undisputed that BIA told the Tribe that it considered the "letter of interest" to be unclear and, following a meeting to discuss the matter, the Tribe did not clarify its intentions in writing. We concluded from these facts that the Tribe had not submitted to BIA a proposal sufficient to trigger the regulatory requirement that if the Secretary does not decline a proposal within ninety days of receipt, the proposal is deemed approved and a contract must be awarded.

Even if the Tribe's position were correct and this analysis were in error, however, the result we reached initially would not change. This is so because the Tribe's motion does not challenge the second reason for our determination: A Title I contract could not have come into being because such a contract is for the transfer of programs, functions, services, or activities which an agency had been providing for a tribe, and BIA had not been providing for this Tribe any programs, functions, services, or activities which were implicated in the "letter of interest." A perfectly phrased request could not have resulted in a contract because there was nothing for BIA to transfer to the Tribe.

All the facts necessary to come to our conclusion were presented by the parties in addressing the issue BIA's motion raised. Even accepting as true all of the Tribe's factual allegations (though not the legal conclusions the Tribe drew from those facts), we found that the Tribe had not shown as a matter of law the existence of a contract between the parties. Thus, following the instruction in *Engage Learning, Inc. v. Salazar*, 660 F.3d 1346, 1354-55 (Fed. Cir. 2011), we properly dismissed the case for failure to state a claim upon which relief may be granted.

Decision

The Tribe's motion for reconsideration is **DENIED**.

STEPHEN M. DANIELS
Board Judge

We concur:

JERI KAYLENE SOMERS
Board Judge

JOSEPH A. VERGILIO
Board Judge