



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Macfadden & Associates, Inc.

File: B-275502

Date: February 27, 1997

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Arthur I. Rettinger, Esq., and William P. McGinnies, Esq., United States Customs Service, for the agency.
Christina Sklarew, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where solicitation provides type-size and page limitations for proposals and states that noncompliance "may" be grounds for exclusion, agency must have a reasonable basis to reject a technical proposal that complies with the page limit, but also includes appendices exceeding the page limit; it may not automatically reject the proposal simply for failing to meet the page limit.

DECISION

Macfadden & Associates, Inc. protests the rejection of its proposal by the Department of the Treasury, U.S. Customs Service, under request for proposals (RFP) No. CS-95-064, issued for support services involving the design, development, programming, testing, implementation and maintenance of automated information systems. The protester contends that its proposal was improperly rejected for exceeding the page limit established in the RFP. We sustain the protest.

The RFP was issued in May 1996, and contemplated the award of an indefinite delivery, indefinite quantity type contract with firm, fixed unit prices. The RFP included detailed instructions regarding the preparation of proposals, providing a specific format that offerors were to follow. Offerors were cautioned that: "[f]ailure of a proposal to comply with these instructions may be grounds for exclusion of the proposal from further consideration." [Emphasis added.] The RFP also reminded offerors not to submit any extraneous narrative material with their proposals. Proposals were to be submitted as three separate volumes covering the following: business management information; technical proposal and oral presentation; and cost/price proposal. The technical proposal was to be divided into five sections, with a total length not to exceed 100 pages, and was to be in Times Roman font with a 12-point type size.

Fifteen firms, including Macfadden, submitted proposals by the June 27 closing date. When the contracting officer examined Macfadden's proposal, he found that the technical volume included 97 pages followed by a 94-page set of appendices. In addition, he noted that the first 97 pages included 13 pages that were in a smaller type size than the required 12-point type. The Customs Service notified Macfadden by letter that its proposal was "technically unacceptable and incapable of being made acceptable." Macfadden filed a protest with the agency, contending that the Customs Service was required to disclose the basis for its determination that Macfadden's proposal was technically unacceptable. The agency denied Macfadden's protest by letter, informing the protester that its technical proposal was considered noncompliant with the terms of the RFP because it exceeded the page limit. This protest followed.

The agency and the protester properly acknowledge that a contracting agency may not accept excess proposal pages in contravention of a solicitation page limitation when that action would result in unequal treatment of offerors. However, Macfadden argues that it is entitled to an evaluation of the pages of its proposal that do not exceed the 100-page limit. In this instance, the Customs Service failed to conduct any technical evaluation of the pages of Macfadden's proposal that were within the page limits, based on its belief that a review of the first 97 pages of the proposal would have been "contrary to law." The agency argues that Macfadden ignored the RFP's instructions at its own peril and asserts that Macfadden's proposal is simply not entitled to further consideration because of this violation.

Where an appendix included with a proposal causes the proposal to exceed a page limit established in the RFP, it would be improper for the agency to consider the appendix because to do so would confer upon the offeror furnishing the appendix a competitive advantage over those offerors whose proposals complied with the page limit. ITT Electron Technology Div., B-242289, Apr. 18, 1991, 91-1 CPD ¶ 383. Accordingly, where solicitations have imposed page and type limits, we have found reasonable the agency's removing pages beyond the solicitation limit and evaluating only those pages within the limit. All Star Maintenance, Inc., B-244143, Sept. 26, 1991, 91-2 CPD ¶ 294; Infotec Dev., Inc., B-238980, July 20, 1990, 90-2 CPD ¶ 58. See Management & Indus. Technologies Assocs., B-257656, Oct. 11, 1994, 94-2 CPD ¶ 134; S.T. Research Corp., B-233115, Feb. 15, 1989, 89-1 CPD ¶ 159. Whether the approach taken by the agency here--automatic rejection of an entire proposal exceeding a page limit rather than evaluation of only the proposal pages within the limit--is proper depends, in the first instance, upon the language of the solicitation. If the solicitation provides that a proposal exceeding a specified page limit will be rejected and an offeror, without protesting that provision, chooses to compete in accordance with the RFP's terms but nevertheless submits a proposal that exceeds the limit, rejection of the proposal, at least in general, would seem to be unobjectionable. Where, however, the solicitation states that a proposal exceeding a page limit may be excluded from consideration, we think offerors are reasonably

put on notice that rejection for exceeding the page limit will not be automatic but instead will occur only if there is a reasonable basis for such action.

One such reasonable basis, suggested by the cases cited above, is that the proposal, when evaluated after removal of the pages exceeding the limit, is unacceptable or, in cases where a competitive range is established, is otherwise inappropriate for inclusion in the competitive range. Here, although a significant portion of Macfadden's proposal--97 pages--are within the page limit, the agency did not evaluate that portion of the proposal and thus did not determine whether the proposal was actually technically unacceptable or otherwise should be excluded from the competitive range either because the proposal would not have a reasonable chance for award or because its inclusion would be unfair to other offerors.

Our review of the 97-page proposal shows that it includes sections covering the five main areas listed in the RFP: past performance; technical approach; understanding the requirements; overall operational approach; and personnel resources and staffing and transition plan. The appendices, on the other hand, include documents such as examples of forms that Macfadden has developed to use as worksheets. In this regard, it is commonly understood that an appendix is supplementary material to what is normally a complete text. The 97 pages thus are easily severable from the appendices and cover all of the areas required by the RFP. Thus, there is nothing on the face of the proposal to indicate that the proposal could not be acceptable.

The agency alleges, however, that Macfadden's proposal was also unacceptable because it included 13 pages that appear to be in 10-point, instead of the required 12-point, type size. In response, the protester asserts that those 13 pages consist of three figures, and that amendment 0001 expressly permitted reductions in font sizes in print appearing in figures, provided it remained easily readable. Further, Macfadden notes that the same print included in those 13 pages, when reprinted in the larger type size, still fits onto 13 pages.

The 13 pages in question consist of project summaries arranged in a chart format to represent Macfadden's experience in three areas. Macfadden developed a form to standardize the presentation of information from past contracts, inserting certain categories of information into squares (requiring smaller type to fit entire lines of information into the various adjacent boxes), followed by a narrative summary of each contract. While we question whether this arrangement of information reasonably justifies classifying these pages as figures, we note that the record shows that reformatting the print into the requisite 12-point type results in print that

still fits onto the same number of pages.¹ Moreover, a cursory examination of the 13 pages immediately reveals that three pages--one page at the end of each figure--have only a few lines of type at the top of the page, making it obvious that the use of the smaller type did not result in condensing the information to circumvent the page limitation. In addition, since the technical proposal (without its appendices) numbered only 97 pages, it was 3 pages under the limit in any event, and thus there was some leeway available to cover any additional volume of print that the change in type size might have effected. Thus, we fail to see how the agency's acceptance of these pages as figures (permitting the acceptance of the smaller type) would confer any competitive advantage on Macfadden.

In short, what we have here is the rejection of a proposal based on an automatic, mechanical application of the RFP's page limit even though the RFP provided only that the agency "may" reject the proposal for that reason. As indicated above, we believe when such language appears in an RFP the agency must have a reasonable basis, above and beyond the page limit itself, for the rejection. The Customs Service has offered no reasonable basis for the rejection--it has not determined that the proposal is unacceptable or should not be in the competitive range, and it has not suggested any other reason, apart from the RFP page limit, for the rejection. Accordingly, the protest is sustained.

By letter of today to the Secretary of the Treasury, we are recommending that the agency, in accordance with the Federal Acquisition Regulation, evaluate that portion of Macfadden's technical proposal that does not exceed the page limit and determine whether the proposal should be in the competitive range. We also recommend that the protester be reimbursed its costs of filing and pursuing its protest, including attorneys' fees. Bid Protest Regulations, § 21.8(d)(1), 61 Fed. Reg. 39039, 39046 (1996) (to be codified at 4 C.F.R. § 21.8)). The protester should submit its certified claim for costs to the contracting agency within 60 days of receiving this decision. Bid Protest Regulations, § 21.8(f)(1), supra.

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¹Macfadden has reprinted the 13 pages in the required type size, to demonstrate that expanding the type does not require more space.