



INTERIOR BOARD OF INDIAN APPEALS

Omaha Tribe of Nebraska v. Chief, Branch of Judicial Services, Bureau of Indian Affairs

26 IBIA 122 (07/14/1994)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

OMAHA TRIBE OF NEBRASKA, : Order Affirming Decision
Appellant :
 :
v. :
 :
 : Docket No. IBIA 94-73-A
CHIEF, BRANCH OF JUDICIAL SERVICES, :
BUREAU OF INDIAN AFFAIRS, :
Appellee : July 14, 1994

This is an appeal from a February 8, 1994, decision of the chief, Branch of Judicial Services, Bureau of Indian Affairs (Chief, BIA), declining to consider appellant's application for a FY 1994 Special Tribal Court grant because it exceeded the 50-page limit imposed in Part IV, section E(3), of the program announcement, 58 FR 53374, 53377 (Oct. 14, 1993).

Part IV, section E, provided, in relevant part:

(3) Each application shall not exceed fifty (50) pages, space and one-half or double-spaced, exclusive of required forms and assurances which are listed below. Applications which are single-spaced will be considered only if it is determined the applicant has not thereby gained a competitive advantage.

(4) The following documents are excluded from the 50 page limitation: A tribal resolution or endorsement or such other written expression as tribal laws or practice require; written assurance of the procedures required in OMB Circular A-128; proof of non-profit status; Standard Forms (SF) 424 and 424B; Certification regarding a Drug-free Workplace, DI-1955 (May 1990); Assurance--Non-construction Programs; and, Certification Regarding Lobbying. All required forms are included at the end of this announcement.

(5) Within the 50 page limitation, the following guidelines are suggested:

(a) Background and summary description (one page);

(b) Program narrative (20-30 pages);

(c) Budget and budget justification (5-10 pages); and

(d) Applicant's capability statement, including an organization chart and vitae for key project personnel, including consultants and third-party technical assistance providers (5-10 pages).

(6) In addition, applicants are encouraged to include letters endorsing or supporting the proposed project which are specific and/or verify tangible commitments to the project, e.g., staff, facilities, training.

In its notice of appeal, appellant contends that the page restriction in section E(3)

is not limited to the grant narrative, as is almost always the case with federal grants, but [applies] to the entire grant application, including attachments. **As a result, the rule in contrary to the intent of the Federal Paper Work Reduction Act.**

* * * * *

In the past and as a matter of standard practice, page limitations have only applied to the narrative section of grant applications. **This is the first time the BIA has applied this rule.** [Emphasis in original.]

(Notice of Appeal at 1-2).

Assuming arguendo that appellant is correct in its assertion that other grant programs impose page limitations only upon the narrative portions of applications, and exclude attachments from the limitation, it would not help appellant's case here. Appellant was responsible for following the instructions for this grant program, regardless of whether they were consistent with the instructions for other programs.

Appellant also contends that, because the statement in section E(3) concerning single-spaced applications was not specific enough, BIA was free to reject applications based upon an arbitrary interpretation of the requirement. In order to avoid the possibility of an arbitrary rejection, appellant asserts, applicants were required to retype all documents they received in single-space format before they included them in their applications. (It appears possible that this alleged retyping requirement is the basis for appellant's allegation that the page limitation violates the Paperwork Reduction Act, 44 U.S.C. § 3501 (1988).)

Appellant's application includes a number of single-spaced and partly single-spaced pages. Clearly, appellant did not feel compelled to retype these pages. Further, it is evident that BIA counted these pages the same as other pages. The Board finds that appellant was not harmed by the requirement in section E(3) concerning single-spaced applications.

In its reply brief, appellant contends that its application is only 48 pages long when all exempt pages are excluded. Appellant submits a copy of its application in which each sheet is marked with a sheet number and a page number. Appellant's totals indicate that the application contains 72 sheets but only 48 pages. Appellant identifies as exempt: (1) documents covered by section E(4); (2) a page containing a checklist of documents covered by section E(4) and a list of exhibits attached to appellant's

application; (3) letters of support; (4) divider pages; and (5) five pages containing vendor proposals and correspondence which appellant contends are exempt under section E(6).

The Board agrees that the documents in appellant's categories (1), (3), and (4) are exempt. The page in category (2) is presumably exempt to the extent it lists exempt documents. However, the bottom half of the page lists non-exempt documents. The Board finds that it is not required to resolve the thorny question of how this page should be counted because it finds that the five pages in appellant's category (5) are not exempt.

In Fallon Paiute-Shoshone Tribes v. Chief, Branch of Judicial Services, 26 IBIA 119 (1994), the Board held that vendor proposals were not intended to come within the meaning of the term "letters endorsing or supporting the proposed project" in section E(6). "Rather," the Board stated, "it appears that the letters contemplated by this section were letters from individuals and groups who would participate in or benefit in non-commercial ways from the project proposed for funding." 26 IBIA at 119. ^{1/}

When the five pages in appellant's category (5) are added to the 48 pages it concedes are not exempt, appellant's page total exceeds 50.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Chief's February 8, 1994, decision is affirmed.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge

^{1/} As in Fallon Paiute-Shoshone Tribes, appellant's application in this case did not identify the vendor proposals as letters of support. Exhibit B to appellant's application was titled "Letters of Support" and included four letters. The vendor proposals, however, were included in Exhibit D, titled "Bid Solicitation & Sales Proposals."