



United States General Accounting Office  
Washington, DC 20548

## Decision

**Matter of:** G.E.G. Sugar Blues & Noe's Colors

**File:** B-284117

**Date:** February 22, 2000

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Elvira Grajales for the protester.  
Catherine Morris, Esq., Defense Logistics Agency, for the agency.  
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the  
General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Where request for quotations did not contain a provision advising that quotations must be submitted by a certain date to be considered, the contracting agency should have considered the protester's low quotation received prior to award since no substantial activity had transpired toward award and other offerors would not have been prejudiced.

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### DECISION

G.E.G. Sugar Blues & Noe's Colors (Sugar Blues) protests the issuance of a purchase order for women's shirts to Clemson University Clemson Apparel Research under request for quotations (RFQ) No. SPO100-99-Q-4249, issued by the Defense Logistics Agency, Defense Supply Center Philadelphia (DSCP). The agency refused to consider Sugar Blues' quotation, which was lower in price than Clemson's, because it was unable to confirm that the quotation had been received prior to the date specified in the RFQ. Sugar Blues contends that its quotation was submitted prior to the specified date and thus should have been considered.

We sustain the protest.

The RFQ, which was issued on September 2, 1999, requested quotations for 4,480 short-sleeved women's shirts.<sup>1</sup> Quotations were due by close of business on September 24.

Seven quotations were received. Sugar Blues' price of \$49,056 was lowest of the seven; Clemson's price of \$50,848 was second low. The contract specialist responsible for the procurement could not confirm that Sugar Blues' quotation had been received prior to close of business on September 24; as a consequence, he determined that the quotation was late and should not be considered. In this regard, the agency reports that the contract specialist, who had scheduled leave, left the agency at approximately noon on Friday, September 24, without making arrangements to have the two facsimile machines designated for receipt of quotations checked during the remainder of the afternoon. When the contract specialist returned to work on Monday, September 27, he found a faxed quotation from Sugar Blues. Since the fax machine on which the quotation was received had not been set to print the time and date of receipt on incoming documents, and the machine had not been checked between noon on Friday and Monday morning, the contract specialist was unable to determine when the fax had arrived.<sup>2</sup> The contract specialist did note, however, that the following legend, generated by the sending fax machine, had been printed across the top of the quotation: "09/25/99 01:55 FAX." Based on this information, the contracting specialist determined that Sugar Blues' quotation had been received after the specified due date and should not be considered for award. On November 5, the agency issued a purchase order to Clemson.

The protester contends that its quotation should have been considered because it was in fact transmitted on September 24.<sup>3</sup> As explained below, we conclude that the quotation should have been considered regardless of whether it was transmitted on September 24 or 25; accordingly, we sustain Sugar Blues' protest.

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<sup>1</sup> Although the RFQ bears the date September 1, the agency reports that it was issued on September 2.

<sup>2</sup> Although, according to the agency, the fax machine in question keeps a "rolling" memory of the last 32 'fax transactions' (faxes either sent or received)" and automatically produces a journal every 32 transactions, Agency Letter to GAO 1 (Jan. 18, 2000), the contracting specialist was apparently unaware that the machine had this capability and did not attempt to obtain a copy of the relevant journal. It is impossible to obtain a copy now since the agency does not retain the journal printouts in its records.

<sup>3</sup> Sugar Blues offers as evidence of this a copy of the telephone bill for its fax line, which shows that a call was placed to the DSCP fax number on September 24 at 1:59 p.m. The bill also shows that no faxes were transmitted from Sugar Blues' number on September 25.

The RFQ here provided that “[o]ffers are requested by COB Friday, September 24, 1999.” Language requesting quotations by a certain date cannot be construed as establishing a firm closing date for the receipt of quotations absent a provision expressly providing that quotations must be received by that date to be considered. John Blood, B-274624, Dec. 19, 1996, 96-2 CPD ¶ 233 at 2; Instruments & Controls Serv. Co., B-222122, June 30, 1986, 86-2 CPD ¶ 16 at 3. Here, the language in the RFQ requesting quotations by September 24 does not meet that standard. The agency therefore should have considered any quotations received prior to source selection if no substantial activity had transpired in evaluating quotations and other vendors would not be prejudiced. Instruments & Controls Serv. Co., supra. Failure to do so would be inconsistent with the statutory provision authorizing simplified procedures for small purchases, 10 U.S.C. § 2304(g)(1)(A) (Supp. IV 1998), which requires that agencies obtain competition to the maximum extent practicable. 10 U.S.C. § 2304(g)(3) (1994); Instruments & Controls Serv. Co., supra. Since the RFQ here contained no late quotations clause; absolutely no activity with regard to the evaluation of quotations had transpired prior to the receipt of Sugar Blues’ quotation; and there is no indication that any other vendor would be prejudiced, the quotation should have been considered.

We recognize that the agency posted on the CBDnet on September 15, 1999, an amendment to the initial Commerce Business Daily (CBD) synopsis of the acquisition, that the amendment provided that “[a]ll faxed and mailed quotes must be received by this office by Close of Business on September 24, 1999,” and that this language could be viewed as imposing a firm closing date. The CBD amendment, however, did not amend the RFQ, but only the original CBD synopsis, which itself was not a solicitation. Where an agency has issued a hard-copy solicitation, the solicitation cannot be amended through a CBD notice, but only through issuance of an amendment to everyone to whom the solicitation was furnished.<sup>4</sup> FAR § 14.208(a). This was not done here, nor is there evidence in the record that the protester otherwise had actual notice of the imposition of a firm closing date. Accordingly, we need not decide whether, had it been incorporated as an amendment into the RFQ, the CBD language requiring the submission of quotations by close of business on September 24 could have served as a basis to reject a late quotation.

We recommend that the agency cancel the purchase order issued to Clemson and issue a purchase order to Sugar Blues, if its quotation is otherwise acceptable and the company is qualified for award. We also recommend that the protester be reimbursed for the costs it incurred in filing and pursuing its protest. Bid Protest

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<sup>4</sup> We note that agencies are permitted in certain circumstances to issue a CBD notice that serves as a combined synopsis and solicitation. See Federal Acquisition Regulation § 13.105(b). Where that is the case, we believe that amendment through another CBD notice would be adequate.

**Regulations, 4 C.F.R. § 21.8(d)(1) (1999). In accordance with section 21.8(f)(1) of our Regulations, Sugar Blues' certified claims for such costs, detailing the time expended and the costs incurred, must be submitted directly to the agency within 60 days after receipt of the decision.**

**The protest is sustained.**

**Comptroller General  
of the United States**