



The Comptroller General  
of the United States

Washington, D.C. 20548

Mitchell

## Decision

Matter of: Darome Connection

File: B-230629

Date: May 16, 1988

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### DIGEST

A protest to a contracting agency alleging that solicitation specifications were unduly restrictive of competition is untimely when filed in a sealed envelope separate from, but delivered concurrently with and marked identically to, the protester's proposal. Contracting officer reasonably understood the entire submission to be the protester's proposal which he had no obligation to read or evaluate until after the closing time for receipt of proposals had passed.

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### DECISION

Darome Connection has protested as unduly restrictive of competition certain requirements of solicitation No. 101-01-88, issued by the Veterans Administration (VA). We dismiss the protest as untimely.

This solicitation is the first step of a two-step sealed bid procurement of a nationwide teleconferencing system for the VA. According to the solicitation specifications, the system is to include a centralized conference controller which is to have certain capabilities and be physically located on the premises of the VA Medical Center in Martinsburg, West Virginia.

The solicitation instructed offerors to put the following notation in the lower left hand corner of the sealed envelope:

042160/135813

"Mailroom: THIS IS A SEALED OFFER, DO NOT OPEN  
PLEASE RECORD DATE AND TIME OF RECEIPT UPON  
ENVELOPE. PROPOSAL NUMBER IFB 101-1-88,  
PART-ONE (RFTP). DUE DATE FEBRUARY 12,  
1988, TIME: 3:00 PM, EST."1/

By letter dated February 18, addressed to the VA's contracting officer, Darome protested the specification requirements as to the capabilities and location of the centralized conference controller as unduly restrictive of competition. Our Bid Protest Regulations require protests based upon alleged improprieties in a solicitation that are apparent before the closing date for receipt of initial proposals to be filed prior to when proposals are due. 4 C.F.R. § 21.2 (a)(1) (1988). Because Darome's protest was received with its proposal and not opened until after the time for receipt of proposals had passed, the VA dismissed Darome's protest as untimely under the contracting agency's own bid protest regulations, which parallel ours in this respect. See 48 C.F.R. § 833.103(a)(1) (1987). Darome then filed the identical protest here. Since the record establishes that Darome failed to file its initial protest timely with the VA, its subsequent protest to our Office is also untimely and is therefore dismissed. 4 C.F.R. § 21.2(a)(3).

According to the VA's contracting officer, approximately 2 hours before proposals were due on February 19, he picked up a solicitation package from Darome consisting of one small box and two sealed envelopes, each of which was marked as follows in the lower left corner:

"Mailroom  
Please record date and time of receipt  
upon envelope. In reference to proposal  
Number IFB 101-1-88 Part One (RFTP)  
Due date prior to 3:00 P.M. EST  
February 19, 1988."

Since there was nothing on the outside of the packages to identify any as a protest, the packages were treated as a technical proposal submitted in response to the solicitation. It was not discovered that one of the envelopes contained Darome's protest letter until after the closing deadline when the proposals were opened and being readied for the technical review team.

In response to the VA's position, Darome simply asserts that its protest "was in a separate marked envelope apart from

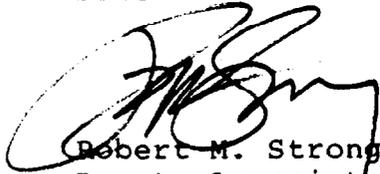
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1/ By amendment to the solicitation, the due date was extended to February 19.

our offer . . . [and] was hand-delivered prior to the . . . cut-off date and time." "However," the protester concedes, "we chose to have our proposal delivered at the same time for economy and convenience."

As the VA correctly points out we consistently have dismissed protests of specification improprieties as untimely when those protests are included in a proposal, since there is no requirement that an agency open or read proposals on or before the closing date. See, for example, Paramount Systems, Inc., B-229648.2, Dec. 30, 1987, 87-2 CPD ¶ 646. Such protests usually are enclosed in the same envelope or box as the proposal. Even though Darome's protest was in a separate envelope, we think the same rationale applies to the particular circumstances of this case, where the protest was delivered concurrently with the proposal and the protest envelope bore the same legend as did the proposal, which legend was very similar to the one prescribed by the solicitation for use on the proposal container. Under these circumstances, we think the contracting officer reasonably understood the three identically-marked parcels delivered together to be the protester's proposal and therefore did not open them and examine their contents until the deadline had passed.

Protest dismissed.



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