

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE:** B-205032

**DATE:** September 20, 1982

**MATTER OF:** Universal Communication Systems, Inc.

**DIGEST:**

1. Second-step bid which includes information containing an exception to a material requirement of the solicitation is nonresponsive. Presumption that a bidder found acceptable under step one of a two-step formally advertised procurement would not disqualify its bid in step two by contradicting step-one proposal does not apply where the exception relates solely to pricing which is exclusively within the domain of step two.
2. Rejection of protester's step-two bid as nonresponsive because of exception to material requirement for firm, fixed price and acceptance of another bid containing discrepancies is not unequal treatment of bidders where inconsistencies and omissions in accepted bid are either de minimis or merely failures to restate information already provided in second-step bid or step-one technical proposal, unlike situation in protester's rejected step-two bid.

Universal Communication Systems, Inc. (UCS), protests the rejection of its bid and award to another firm under invitation for bids (IFB) No. 549-37-81, issued by the Veterans Administration (VA). We deny the protest.

This IFB initiated the second step of a two-step formally advertised procurement of a telephone system for the VA Medical Center in Dallas, Texas. The bidders, those firms which submitted acceptable technical proposals in the first step of the procurement, were required to compute bids on a VA-supplied bid worksheet. Generally, the worksheet required bidders to enter as individual line items one-time and/or recurring charges for various items of service and equipment over the projected 10-year life of the system, including anticipated system growth; these worksheet entries were then to be discounted, using VA-supplied adjustment factors, to reflect the net present cost of the system. (Generally, "net present cost" equals

the cost of the system over the full system's life, less any residual value, adjusted to reflect the time value of money.)

The IFB also required bidders to respond to each of the technical requirements stated in the solicitation and furnish backup documentation providing a detailed breakdown of the equipment and service costs for each of the items on the bid worksheet. Paragraph 4.0 of the IFB stated in part:

"Each bid shall include the cost of follow-on services which may be required, such as installation, removal or relocation of equipment including labor. The cost of follow-on services quoted shall be at a firm-fixed price for the first year following cutover/acceptance."

The backup materials accompanying UCS's bid included a document entitled "Follow-On Services Price List" with prices effective for considerably less than the year contemplated under paragraph 4 of the IFB, quoted above. The list included 19 items, ranging from the installation or relocation of telephones to the installation of longer handset cords. The contracting officer determined that the conflict between the effective date of the prices on the list and the requirements of paragraph 4 rendered UCS's bid nonresponsive.

UCS contends that the "Follow-On Services Price List" was mistakenly included with its bid and that the error should have been obvious to the contracting officer. In support, UCS contends that the "Follow-On" list applied only to the dual-tone, multifrequency (DTMF or touchtone) equipment which UCS offered as an option rather than to the rotary-dial equipment which UCS offered in its bid. UCS points to items 1 (Install Single Line Phone) and 3 (Install Five Line Phone) of the list, both of which include a "Tone dial" (touchtone) instrument in the equipment lists, as evidence that the list covers only optional touchtone telephones and is irrelevant to UCS's primary bid.

Because of the above, UCS concludes that the contracting officer should either have disregarded the list or allowed its correction as a mere clerical error,

particularly in view of the presumption that no bidder would insert in its second-step bid something which would render its acceptable first-step proposal nonresponsive. UCS asserts that, even if the error was not obvious and the list should have been considered, the failure to comply strictly with the 1-year after acceptance/cutover requirement should have been waived as a minor informality.

Initially, we note that none of the other 17 items on the list, for example, relocation of telephones, installing intercoms or adding extensions on key equipment, refers to either touchtone or rotary-dial equipment and those items could apply to either type of equipment. Also, in UCS's narrative response to the solicitation's technical requirements, UCS states that "UCS has included a list of equipment and their respective cost for Follow-on service" and we find that the "Follow-On" list is the only document in UCS's bid to which this statement could reasonably refer. Contrary to UCS's suggestion of "clear error," we consider it more reasonable to regard the list as an integral part of UCS's bid, particularly in view of the specific reference to the list elsewhere in the bid.

We conclude that the contracting officer could neither ignore the conflict created by UCS's "follow-on" list nor treat it as a minor informality. First, UCS's total price for follow-on services was more than twice the approximately \$60,000 difference between UCS's low bid and the second low bid of Fisk Telephone Systems, Inc. (Fisk), the awardee. Second, under the present value concepts used to compute the bids, the sooner a price change occurs, the more significant its effect on the bid. Consequently, we find the requirement for a firm, fixed price to have been a material condition of the solicitation. Furthermore, although we agree with UCS that there is a presumption that a bidder found acceptable under step one would not disqualify its bid in step two by inserting a condition which contradicts its accepted step-one proposal, see, e.g., Spectrolab, A Division of Textron, Inc., B-180008, June 12, 1974, 74-1 CPD 321, we do not agree that the presumption applies here because UCS's first-step proposal does not specifically address the subject of follow-on services, such as moving telephones. See Federal Aviation Administration, B-193238, February 27, 1979, 79-1 CPD 136, aff'd, TM Systems, Inc.,--Reconsideration, B-193238, April 3, 1979, 79-1 CPD 231. Furthermore, UCS's bid

condition, here, relates solely to pricing, which is exclusively within the domain of step two. Therefore, we agree with the contracting officer that UCS's bid was nonresponsive.

UCS also contends that if its bid was nonresponsive, then Fisk's bid must also have been nonresponsive. In this regard, UCS contends that (1) Fisk's bid worksheet shows one price for the cable distribution network, whereas other portions of Fisk's bid package show a different price; (2) Fisk's bid failed to respond to an IFB request for details of "expansion of the switch station capacity"; (3) Fisk's response to an IFB request for the details of console expansion to increase capacity states that the consoles do not need to be expanded to increase capacity, but then includes details of certain costs for expansion creating an ambiguity over whether there are costs for expanded capacity; and (4) Fisk's bid worksheet contained no entry for item S.12, "Other Growth," which the VA corrected by moving the figures appearing on another line. UCS contends that these matters are no more readily clarified than the conflict in UCS's bid and suggests that the VA's acceptance and/or correction of these errors or omissions in Fisk's bid constitutes unequal treatment.

We disagree. With the exception of the two prices for the cable distribution network, which differed by only \$83 out of more than \$300,000, a difference we consider de minimis, all of the other seeming discrepancies in Fisk's bid package could be resolved by referring either to other parts of the bid or to Fisk's step-one technical proposal. In effect, they were nothing more than mere omissions of information already provided elsewhere rather than a conflict with a clear and material requirement of the solicitation, as was the case with UCS's bid. Consequently, VA was correct in accepting Fisk's bid.

The protest is denied.

*for* Harry R. Van Allen  
Comptroller General  
of the United States