

*H. Aspinall  
Proc I*

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

14474

*[Protest Against Agency Refusal to Accept Bid  
Modification]*

FILE: B-198645

DATE: August 4, 1980

MATTER OF: Texas Trunk Company, Inc.

**DIGEST:**

1. Bid modification sent to contracting agency after bid opening was properly rejected, since late bid modification may be accepted only if sent to agency prior to bid opening.
2. Where contracting agency's failure to provide bidder with amendment was not result of conscious and deliberate effort to exclude bidder from competition, bidder's late bid modification may not be accepted.
3. Award on "all or none" bid which is lower than any combination of individual bids is proper even though partial award could be made at lower unit cost.

Texas Trunk Company, Inc. (Texas Trunk), protests award to any other bidder under Defense General Supply Center invitation for bids No. DLA400-80-B-1740.

The original procurement consisting of five items, each comprised of a quantity of chests (field tableware outfits) to be delivered f.o.b. destination to five Government installations, was increased by amendment No. 1, by four additional items, each comprised of an additional quantity of the same chests to be delivered f.o.b. destination to four of the original installations. Texas Trunk and another prior supplier of this chest, while provided with the original invitation, inadvertently were not sent copies of the amendment due to an oversight caused by the conversion being effected at the time from a mechanical to a computerized system for the bidders mailing list. When Texas Trunk learned of this amendment after bid opening, it advised the contracting officer in writing that it was offering the additional four items at the same unit prices it offered the corresponding (those being

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delivered to the same installations) four items in the original bid. This bid modification was determined by the contracting officer to be unacceptable, because it was submitted late and could not be accepted under the terms of the invitation.

The four bids received by bid opening were as follows:

Bidder	Five items	Four items	Total items
Kessel Kitchen Equipment Co., Inc.	\$18,871	\$8,684	\$27,555
Wayne Novelty Corp.	31,640	No bid	Not applicable
Auto Skate Co., Inc.	13,290	6,075	19,365
Texas Trunk	13,218.03	No bid	Not applicable

Texas Trunk submitted the low aggregate price for the original five items--it bid "all or none" on these items--and would have had the low aggregate price for the entire nine items had its modification not been found unacceptable. Auto Skate Co., Inc., which also submitted an "all or none" bid, submitted the low aggregate bid on the total nine items.

Texas Trunk protests that it was the low bidder on the first five items, that it was the low bidder on the second four items, and that, consequently, as low bidder for the entire quantity of nine items it should receive the award. It believes that the prices it bid on the first five items placed the contracting officer on notice of what it would bid on any additional quantity. In this respect, the prices it bid on the second four items were identical to the respective four of the first five items, as was the case with the other bidders bidding on all nine items. Finally, Texas Trunk believes that it should not be penalized for the agency's failure to send it a copy of the amendment.

Notwithstanding the contentions of Texas Trunk, the protest is denied.

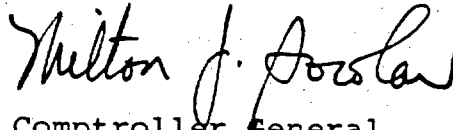
First, the invitation by referencing Defense Acquisition Regulation § 7-2002.2 (1976 ed., amended by Defense Acquisition Circular # 76-18, March 12, 1979) provided that late bid modifications could be accepted and considered for award under certain conditions. One of these conditions was that the modification had to be sent to the contracting agency prior to bid opening. The Texas Trunk modification was not sent prior to bid opening and, therefore, was correctly rejected as late. Further, the modification did not make an otherwise successful offer more favorable to the Government, since no prior bid prices had been submitted on the additional four items.

Second, the late submission of the Texas Trunk modification may not be excused by the agency's failure to provide Texas Trunk with the amendment prior to bid opening. The adverse consequences on a bidder who has not been provided with an amendment will not be considered unless it is shown that the failure to provide the amendment was the result of a conscious and deliberate effort to exclude the bidder from participating in the procurement competition. Commercial Lawn Maintenance, Inc., B-193626, February 1, 1979, 79-1 CPD 78; Fifth Generation Systems, Inc., B-196630, February 28, 1980, 80-1 CPD 162. In this case, the failure to send Texas Trunk the amendment was inadvertent and not deliberate.

Third, while the bid Texas Trunk submitted on the first five items is responsive and may be considered for award, Octagon Process, Inc., B-186850, December 22, 1976, 76-2 CPD 521, it was provided in the "Solicitation Instructions and Conditions" that an award would be made in a manner "most advantageous to the Government, price and other factors considered." Since the low ("all or none") bid for the entire number of items being procured was \$19,365 (the only other award that could have been made on the entire nine items would have been to Texas Trunk on the first five items and to Kessel Kitchen Equipment Co., Inc., on the second four items at a total price of \$21,902.03), the fact that the Texas Trunk Bid on the first five items was lower than the other bid prices submitted on these five items was not determinative of to whom the contract should be awarded. Since \$19,365 was the lowest overall price submitted to the contracting agency, the agency was

correct in determining that price acceptable for award.  
52 Comp. Gen. 756 (1973); Arcwel Corporation, B-191840,  
July 5, 1978, 78-2 CPD 8.

Since adequate competition and reasonable prices  
were obtained, no basis exists for our Office recom-  
mending that the procurement be resolicited. Native  
Plants, Inc., B-195481, January 11, 1980, 80-1 CPD 35.



For The Comptroller General  
of the United States