



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Koehler GmbH
File: B-246012
Date: February 12, 1992

Reed L. von Maur Esq., and Michael J. Murphy, Esq.,
von Maur, Matthews & Partners, for the protester,
Herbert F. Kelley, Jr., Esq., Department of the Army, for
the agency.
Jennifer Westfall-McGrail, Esq., and Andrew T. Pogany, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Where bidder's representative failed to sign solicitation's
Certificate of Procurement Integrity on designated signature
line, he failed to unequivocally commit his company to the
certificate's terms; thus, the agency properly rejected his
company's bid as nonresponsive.

DECISION

Koehler GmbH protests the rejection of its bid under invita-
tion for bids (IFB) No. DAJA76-91-B-0060, issued by the U.S.
Army for interior and exterior repair of Building No. 1365
at Fliegerhorst Kaserne in Hanau, Germany. The Army reject-
ed Koehler's bid as nonresponsive because Koehler's repre-
sentative failed to execute properly its Certificate of
Procurement Integrity. Koehler contends that its bid was
responsive because its representative otherwise manifested
an intent to be bound by the certificate's terms.

We deny the protest.

The IFB contained the Certificate of Procurement Integrity
clause set forth at Federal Acquisition Regulation (FAR)
§ 52.203-8 (FAC 90-5). It advised bidders that a failure to
submit the signed certificate would render a bid
nonresponsive.

Twelve bidders responded to the IFB. The agency permitted
the apparent low bidder, Ehlers-Noll GmbH, to withdraw its
bid because of mistake and rejected Koehler's bid, which was
second low, based on the bidder's failure to submit a prop-
erly signed Certificate of Procurement Integrity with its
bid. The agency also rejected the bid of the third low

bidder, EMS GmbH, on unrelated grounds. It awarded a contract to the fourth low bidder, Ahersfelder GmbH & Co.

Koehler furnished the following information with its Certificate of Procurement Integrity: (1) name of the officer responsible for preparing the bid; (2) identification of the procurement; (3) identification of the bidder; (4) identification of any violation or possible violations of the Act; and (5) the printed name of the officer responsible for the bid, his title, and the date. Koehler's managing director, Heinz Koehler, who was responsible for preparation of the bid, did not sign the certificate, but only initialed the bottom right-hand margin of the page on which the signature line appeared. He also initialed several other pages requiring information to be furnished with the bid.

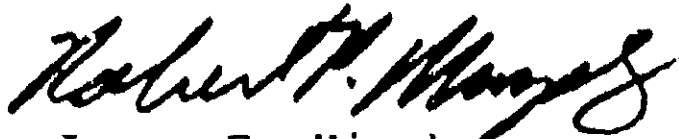
The agency contends that it was unclear from the initials in the margin whether Mr. Koehler intended to be bound by the certificate's terms since a proper signature did not appear on the signature line; thus, the agency maintains, it was required to reject the bid as ambiguous. Koehler disputes this position, arguing that Mr. Koehler's initials in the margin clearly reflected his and his company's intent to be bound.

The certification requirement, which imposes substantial legal obligations on the contractor, is a material solicitation term and, thus, a matter of responsiveness. Mid-East Contractors, Inc., 70 Comp. Gen. 383 (1991), 91-1 CPD ¶ 342. Where, as here, a bid's responsiveness is challenged, we review the bid to determine whether the bid represents an unequivocal commitment to perform without exception the requirements stated in the IFB so that the bidder will be bound to perform in accordance with all the material terms and conditions. Contech Constr. Co., B-241185, Oct. 1, 1990, 90-2 CPD ¶ 264. As a result of the substantial legal obligations imposed by the certificate, and given the express requirement for the certificate to be separately signed, the omission from a bid of a signed and completed Certificate of Procurement Integrity leaves unresolved a bidder's legal commitment to comply with the certification requirements. Consolidated Metal Prods., Inc., B-244543, July 15, 1991, 91-2 CPD ¶ 58.

Here, in our view, by failing to enter his signature on the line expressly provided for that purpose, Mr. Koehler failed to unequivocally commit himself and his company to the certificate's requirements. We have found the signature of a bidder's representative in the margin of the page containing the certificate to be sufficient, where the certificate failed to include a signature line, and bidders had no choice but to improvise. David Morales, B-243791.3, Aug. 27, 1991, 91-2 CPD ¶ 202. In our opinion the holding

in Morales goes no further--where a certificate signature line is included, the contracting agency may reasonably conclude that by failing to sign in the designated location, the bidder's representative has failed to manifest an unequivocal intent to be bound by the certificate's terms. We find that Mr. Koehler's failure to sign the Certificate of Procurement Integrity on the designated line rendered his company's bid nonresponsive.

The protest is denied.


James F. Hinchman
General Counsel