

Timmerman



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Century Marine Corp.  
File: B-232630  
Date: December 16, 1988

## DIGEST

Failure to furnish nonmaterial representations and certifications in a bid does not render the bid nonresponsive.

## DECISION

Century Marine Corp. protests the award of a contract to Southwest Marine, Inc., under invitation for bids (IFB) No. DTMA94-88-B-80004 issued by the Maritime Administration for the deactivation and repair of the "Cape Ducato." The Maritime Administration rejected Century's bid as nonresponsive for failing to comply with the solicitation requirements concerning a Master Lump Sum Repair Agreement.

We sustain the protest.

The agency received three bids as of the July 1, 1988, opening. The contracting officer determined that Century's bid was nonresponsive because that firm had not entered into a Master Agreement with the Maritime Administration and it did not comply with the IFB instructions for those not holding a current Master Agreement. The Master Agreement is used by the agency to standardize vessel repair contracts. It contains standard form contract clauses and contractor representations and certifications. Award was made to Southwest Marine, the second low bidder at a price of \$2,196,786 which was \$397,116 more than Century's low bid.

Clause H.1 of the IFB required bidders to be either holders of a current Master Agreement or to indicate "in writing" that all terms and conditions of the Master Agreement would apply to its bid, provide acceptance of the Master Agreement with its bid, and submit all annual representations and certifications required by the Agreement. Clause K.1(a) of the solicitation required bidders who were Master Agreement

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holders to check the appropriate block indicating that their annual representations and certifications had been submitted to the Master Agreement issuing office. Others were to check the block indicating that enclosed with the bid were the representations and certifications. The clause further warned bidders that the failure to submit the required representations and certifications could result in bid rejection.

Century marked the first block in clause K.1(a) indicating that it was a holder of a Master Agreement. Century does not dispute that it was not, at that time, a holder of such an agreement. Instead, Century argues that it reasonably relied on the representations of an agency official who directed it to mark the block indicating that it was a Master Agreement holder. According to the protester the official assured it that any problems regarding the actual completion of the Master Agreement could be resolved after bid opening. The agency denies that it told Century to mark the first block in clause K.1(a). We need not, however, resolve the conflict because we do not find that Century's marking the wrong block and failing to submit the required certifications rendered its bid nonresponsive.

Notwithstanding the agency's contrary view, the solicitation terms do not require the rejection of a bid submitted by a firm that has not signed the Master Agreement. We think that by signing its bid, the protester agreed to be bound by all the terms of the Master Agreement except the representations and certifications. Section J of the IFB states that, "All terms, conditions, articles, and referenced documents and clauses of the Maritime Administration Master Lump Sum Repair Agreement (MLSRA) dated 02-19-88 including all modifications shall be considered as part of this contract." Section H provides that non-holders of a Master Agreement may bid if they agree "in writing" that "all terms and conditions of the Agreement apply to its bid." In our view, Century's signature on the bid constitutes its written "agreement" to abide by the terms and conditions of the solicitation which specifically included all of the terms and conditions of the Master Agreement.

Century did not, however, submit the representations and certifications required of non-holders. They consist of standard certifications which commonly appear in solicitations, such as those relating to previous contracts and compliance reports, independent price determination, contingent fees, affirmative action and type of business organization. We have held that a bidder's failure to complete such certifications and representations that have no bearing on whether the bid constitutes an unequivocal

offer to provide the product or service does not affect the bid's responsiveness. R&R Roofing and Sheet Metal, Inc., B-220424, Nov. 21, 1985, 85-2 CPD ¶ 587. In this regard, the regulations define an immaterial defect as one with a negligible effect on price, quantity, quality or delivery. Federal Acquisition Regulation § 14.405. It specifically lists the failure of a bidder to execute certifications concerning previous contracts and compliance reports and affirmative action as examples of minor informalities which can be cured or waived. The only otherwise material certifications, whether the bidder will supply end items manufactured or produced by a small business and whether a minimum bid acceptance period longer than that required by the agency will be applicable, are immaterial here since this procurement is not a small business set-aside and the bidder is not required to specify an alternate minimum bid acceptance period. Since none of the standard certifications to be furnished pursuant to the Master Agreement has other than a negligible effect on price, quantity, quality or delivery, Century's failure to provide the certifications does not render its bid nonresponsive. We therefore sustain the protest.

Since significant performance has occurred under the contract we do not recommend that the award be disturbed. In view, however, of our conclusion that Century's bid was improperly rejected, we think that Century is entitled to bid preparation costs and to the costs of filing and pursuing the protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.6(d) (1988). Century should submit its claim for such costs directly to the agency. 4 C.F.R. § 21.6(e).

The protest is sustained.

*Milton J. Fowler*  
for Comptroller General  
of the United States