

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

B-176673

JAN 3 1973

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Attention: Herbert Stoller, Esq.

Gentlemen:

Reference is made to your letter of July 28, 1972, with enclosures, protesting on behalf of Materials Research Corporation, the action of the National Aeronautics and Space Administration (NASA) in adding \$7,674 to the low bid submitted by Cooke Vacuum Products, Inc., under invitation for bids No. 1-51-2709, and in making an award on that basis to the low bidder.

The copy of the administrative report sent to you by NASA advised that the addition was made to correct an error in bid and explained the basis for the correction. The report indicates that Cooke failed to include in its lump-sum bid price the cost of the required vacuum pump station which it had estimated as being \$7,723. In support of its allegation of error and its intended bid price, Cooke submitted the specifications and the original worksheets used in computing its bid price. The worksheets consist of a two-page listing of material and labor and other cost elements totaling \$35,195, with the amount of \$34,974 entered directly beneath the computation and marked "Bid." A .628 percent reduction in price was made by the corporation for competitive reasons. At the top left-hand corner of page 1 of the worksheets is the entry "Pump Sta 7723." The worksheet shows that the figure "7723" was not extended into the amount column with the result such figure was omitted from the aggregate total bid price. The corporation also submitted a cost estimate on a "Standard 6 Pumping System" which shows a total price of \$7,723--the amount shown on its worksheet. In correcting the Cooke bid, NASA increased the amount thereof by \$7,674 rather than \$7,723--a difference of \$49 or .628 percent of \$7,723. We are advised that the amount of the requested increase was decreased by \$49 or .628 percent because Cooke's worksheets show that it reduced its total price by that percentage for bidding purposes. On the basis of the foregoing, the Cooke bid was corrected without affecting its status as low bidder.

You contend that a pump station of the kind necessary to comply with NASA specifications could not possibly, in accordance with sound

B-176673

business practice, be sold to the Government as a component of a Sputter Etch System at a price of \$7,723, the amount determined to have been erroneously omitted from the bid price. You maintain that Cooke must have intended to add a price increment to the pump station price to cover the cost of incorporating it into the Sputter Etch System, and that the absence of an amount for the pump station among the other entries in the right-hand column of Cooke's worksheets indicates that a mark-up on the \$7,723 price was intended to have been included on the worksheet.

One of the items of cost shown on Cooke's worksheet is "Assembly & Test of Spec Items 2000." We have been informally advised by Cooke that the foregoing sum of \$2,000 includes an amount to cover the cost of incorporating the pump station into the Sputter Etch System. Cooke's worksheets are consistent with this explanation. Therefore, we find no basis for disagreeing with the administrative conclusion that there is no evidence that any mark-up on the pump station price, other than the mark-ups already included in the \$7,723 amount, was intended.

Section 2.406-3(a)(2) of the NASA Procurement Regulation provides that where, as in this case, there is clear and convincing evidence establishing the existence of an error in bid and the bid actually intended, correction of the bid is authorized, provided such correction will not result in displacing one or more lower acceptable bids. Such procedure has been sanctioned by our Office and the Court of Claims. 41 Comp. Gen. 160 (1961); B-172578, July 22, 1971; and United States, 192 Ct. Cl. 176 (1970). The Cooke bid was properly corrected in accordance with established procedures.

While you contend that the _____ case, *supra*, relied upon by the Director of Procurement in his determination of mistake, is distinguishable, the principles of law announced therein are equally applicable here so far as they relate to the correction of the proven error.

Accordingly, the protest is denied.

Very truly yours,

R.F.KELLER

Deputy] Comptroller General
of the United States