



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

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B-177542 (2)

May 23, 1973

The Honorable Howard H. Callaway  
The Secretary of the Army

Dear Mr. Secretary:

Reference is made to a letter, AMXGC-P, dated February 5, 1973, from the Deputy General Counsel, Headquarters, United States Army Materiel Command, concerning the protest of Braddock, Dunn and McDonald, Incorporated (BDM), against award of a contract to another firm under request for proposals No. DAAB07-72-R-0469, issued June 30, 1972, by the United States Army Electronics Command, Fort Monmouth, New Jersey.

Enclosed is a copy of our decision of today to the protesting firm denying its protest. We have concluded that the lack of negotiations with BDM was justified because BDM received such a low technical merit rating score that meaningful negotiations were not possible. However, we believe that the record in the instant case is less than convincing in attempting to justify the procuring activity's failure to conduct any technical discussions solely on the basis of avoiding "technical transfusion or leveling." Although we recognize that it is within the ambit of administrative discretion to limit technical discussions to avoid "transfusion or leveling," we believe that the total absence of any such discussions, written or oral, for at least the purpose of seeking clarification, may not ordinarily be justified. 51 Comp. Gen. 621 (1972). Therefore, we suggest that cognizant procurement personnel be advised that in view of the statutory requirement for conducting meaningful discussions, 10 U.S.C. 2304(g), our Office will closely scrutinize the justification for failing to engage in such discussions on the basis of avoiding "technical transfusion or leveling."

Sincerely yours,

Paul G. Dembling

For the Comptroller General  
of the United States

[Protest of Army Contract Award]

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