

---

**From:** The LAB @ DOC  
**Subject:** MMCB Vol. 12 - More About Exchanges, Nov. 2020



Welcome to MMCB Volume 12! This Monday covers a decision that seems to further support exchanges, like Select Best-Suited, then Negotiate, under FAR subpart 16.505. This was sent over by the USCG ISD attorney, who said ***“I wish I had been aware of, or found, this case when dealing with our protest on the CG ALS info. sys. support services award earlier this year. You may want to consider adding this case to the PIL training and/or workbook.”*** Since that attorney brought it up, I am going to share it with this community as well.

---

**Matter of:** David Defense Group, Inc.  
**File:** B-417470  
**Link:** <https://www.gao.gov/assets/b-417470.pdf>  
**Date:** July 11 ,2019

This MMCB covers a Navy 16.505 procurement, where the incumbent lost out on a \$45M task order. This actual protest decision isn't worth reading, just the footnote 2 regarding the initial protest is what bears fruit. This is simple, straightforward, and consistent to how we teach and preach this technique. This is short and sweet as it has been a while since we had one. I am trying to unpack two decisions against the same procurement (\$20B) to which half of the digest is dedicated to oral presentations, so that may be next Monday so get your breakfast ready for that one! I emailed the CO/CS from the Navy to get a copy of their solicitation, so stay tuned!

*In its initial protest, the protester additionally alleged that agency engaged in unequal discussions with the awardee, that the awardee engaged in a “bait and switch” material misrepresentation, and that the awardee was ineligible for award because it lacked a facility security clearance. Protest at 19-22. These allegations were dismissed as speculative because they were alleged upon “information and belief,” and were not otherwise supported by adequate explanation or evidence. Notice of Resolution of Agency Request to Dismiss at 1-2. For example, the protester alleged, upon information and belief, that the agency opened discussions with other offerors, but did not open discussions with it. The protester did not provide evidence establishing that discussions or other communications occurred, other than an ambiguous agency response to a multi-part question posed by the protester. See Protest, ex. D at 1-2. On this basis, we concluded that the protest ground was speculative. See, e.g., Siebe Envtl. Controls, B-275999.2, Feb 12, 1997, 97-1 CPD ¶ 70 at 2 (prior protest dismissed “because a mere allegation of improper agency evaluation, made ‘on information and belief’ without any supporting explanation or documentation, does not satisfy the requirement in our Bid Protest Regulations . . . that a protester provide a detailed statement of legal and factual grounds for protest”). However, even assuming, for the sake of argument, that some communications occurred between the agency and MLT prior to award, the solicitation expressly contemplated such communications. In this case, the RFP provided that, because this procurement was carried out under Federal Acquisition Regulation (FAR) § 16.505, the contracting officer could communicate with*

*offerors without regard to the rules of FAR part 15.3 concerning competitive range determinations and discussions. RFP at 59. Additionally, the RFP specifically contemplated that the contracting officer could identify the offeror most likely to provide best value and hold negotiations solely with that offeror. Id. Accordingly, even if this protest ground were not speculative, it represented an untimely challenge of the terms of the solicitation, and was appropriately dismissed See 4 C.F.R. § 21.1(a).*

**This volume was originally authored in November 2020 and refreshed in March 2025.**

\*Disclaimer: The information contained in this MMCB is merely an opinion of the author and does not constitute formal legal or policy guidance of any kind.

