

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
Bid Protest**

MED TRENDS, INC.,	)	AGREED-TO PUBLIC VERSION
	)	
Plaintiff,	)	
	)	
v.	)	No. 11-420C
	)	Judge Eric G. Bruggink
THE UNITED STATES,	)	
	)	
Defendant,	)	
	)	
And	)	
	)	
MICROTECHNOLOGIES, LLC,	)	
	)	
Defendant-Intervenor.	)	

**MICROTECHNOLOGIES, LLC'S MOTION TO DISMISS  
PLAINTIFF'S COMPLAINT FOR LACK OF JURISDICTION, FOR FAILURE  
TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED, AND DUE TO  
PLAINTIFF'S LACK OF STANDING, AND SUPPORTING MEMORANDUM OF LAW**

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Dated: July 20, 2011

**TABLE OF CONTENTS**

**I. QUESTIONS PRESENTED .....2**

**II. STATEMENT OF FACTS.....2**

**III. THE COURT LACKS SUBJECT MATTER JURISDICTION OF  
PLAINTIFF’S PROTEST.....6**

**IV. PLAINTIFF LACKS STANDING AND ITS COMPLAINT FAILED  
TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED .....8**

**V. CONCLUSION ..... 16**

**TABLE OF AUTHORITIES**

**Cases**

*American Airlines, Inc. v. Austin*, 75 F.3d 1535 (Fed. Cir. 1996) ..... 8

*Burnside-Ott Aviation Training Ctr. v. Dalton*, 107 F.3d 854 (Fed. Cir. 1997)..... 7

*Commissioning Solutions Global, LLC v. United States*, 97 Fed.Cl. 1 (2011)..... 9

*DataMill, Inc. v. United States*, 91 Fed. Cl. 740 (2010) ..... 6, 7

*DMS All-Star Joint Venture v. United States*, 90 Fed. Cl. 653 (2010) ..... 9

*Femme Comp Inc. et al. v. United States*, 83 Fed.Cl. 704 (2008) ..... 11

*HomeSource Real Estate Asset Services, Inc. v. United States*, 94 Fed.Cl. 466  
(2010)..... 10

*Ironclad/EEI v. United States*, 78 Fed.Cl. 351 (2007)..... 10

*Matthews v. United States*, 72 Fed. Cl. 274 (2006) ..... 7

*Myers Investigative and Security Services, Inc. v. United States*, 275 F.3d 1366  
(Fed. Cir. 2002)..... 8

*RCS Enterprises, Inc. v. United States*, 46 Fed.Cl. 509 (2000) ..... 7

**GAO Decisions**

*Bannum, Inc.*, B-271075 *et al.*, May 22, 1996, 96-1 CPD ¶ 248..... 11

*Harris Corporation*, B-274566, Nov. 27, 1996, 96-2 CPD ¶ 205 ..... 11

*Technatomy Corporation*, B-405130, June 14, 2011, 2011 CPD ¶ 107 ..... 7

**Statutes and Regulations**

41 U.S.C. § 4106(d) ..... 9, 12

41 U.S.C. § 4106(d)(4) ..... 9

41 U.S.C. § 4106(f)(3), ..... 6

FAR (48 C.F.R.) 1.602-2(b) ..... 14

FAR (48 C.F.R.) 16.505(b)(1)(iii)(C)..... 13

FAR (48 C.F.R.) 16.505(b)(1)(iii)(D)..... 14

FAR (48 C.F.R.) 16.505(b)(iv)(C)..... 9, 13

FAR (48 C.F.R.) 16.505(b)(iv)(D) ..... 9, 14

FAR (48 C.F.R.)1.102(b)(3) ..... 14

FAR (48 C.F.R.)1.102-2(c)(3) ..... 14



legal memorandum are based upon the allegations in Plaintiff's Complaint as well as the Administrative Record ("AR") filed by the Defendant on July 5, 2011. This Motion is timely filed pursuant to the Court's scheduling order filed on June 24, 2011.

**I. QUESTIONS PRESENTED**

- A. Whether the Court has subject matter jurisdiction over this bid protest action.
- B. Whether the Plaintiff has standing to bring this bid protest action.
- C. Whether Plaintiff's Complaint has stated claims upon which relief can be granted.

**II. STATEMENT OF FACTS**

The DOL issued Request for Quotations No. RFQ547327 (the "RFQ") on February 23, 2011 seeking technical, past performance and cost proposals to provide operations and maintenance support services to maintain and operate OSHA's Integrated Management Information System. AR 92 and 93. The proposal due date, as extended, was April 1, 2011. AR 138. The RFQ notified prospective SDVOSBC vendors with VETS GWAC contracts that the "Government will award a contract resulting from this RFP to the responsible offeror whose offer conforming to the RFP is most advantageous to the Government based on the best overall proposal that is determined to be the most beneficial to the Government, with appropriate consideration given to the three evaluation factors: Technical Capability, Past Performance, and Price." AR 93 and 140.

The Technical Capability factor (Factor I) was significantly more important than the Past Performance factor (Factor II), which was significantly more important than Price (Factor III). AR 93 and 140. The RFQ further stated as follows:

The Contracting Officer shall also conduct a price analysis in accordance with the techniques in FAR 15.404-1(b)(2). The non-Price factors combined are significantly more important than

Factor III, Price. However, price will become significantly more important as non-price factors approach equality. . . . Offerors are cautioned that the award may not necessarily be made to the lowest price offered. The Government is more concerned with obtaining superior technical features than with making an award at the lowest overall price to the Government. However, the Government will not make an award at a significantly higher overall price to the Government to achieve slightly superior technical features. **To receive consideration for award, a rating of no less than “Good” must be achieved for Factor 1, and its associated sub-factors (Understanding of the Requirement, Key Personnel, Corporate Experience, and Start-Up Plan – Phase-Out Plan).** The Government intends to evaluate offers and award a contract without discussions with offerors. . . .

AR 93-94 and 140-41(emphasis added).

The RFQ described the weighting of the evaluation factors, the adjectival ratings that would be assigned to proposals, and the evaluation approach. AR 94-95 and 141-42. For purposes of the Technical Capability factor and subfactors, an Excellent, Good, Marginal or Unsatisfactory rating would be applied. AR 94 and 142. The RFQ defined a “Good” rating as follows: “A proposal that satisfies all of the Government’s requirements with adequate detail to indicate feasibility of the approach and shows an understanding of the problems and offers some significant strengths or numerous minor strengths, which are not offset by weaknesses, with an overall low to moderate degree of risk in meeting the requirements.” AR 95 and 142. A “Marginal” rating was defined as follows: “A proposal that satisfies all of the Government’s requirements with minimum detail to indicate feasibility of approach and shows a minimal understanding of the problem with an overall high degree of risk in meeting the Government’s requirement.” AR 95 and 142.

The RFQ provided instructions for the preparation of the three required proposal volumes addressing each of the three factors. AR 95-99 and 142-46. With respect to Volume I – Technical, and as is relevant to this protest, the instructions for subfactor 3, Corporate

Experience, were as follows: “The offeror shall submit a summary of work experience of a similar nature, scope, complexity, and difficulty to that which will be performed under the prospective contract contemplated by this RFP.” AR 97 and 144.

The DOL received three proposals in response to the RFQ. AR 600. The technical proposals of the three offerors were evaluated by [REDACTED] and an Evaluation Consensus Form was prepared for each of the proposals. AR 582-83 (MicroTech), 584-585 (Med Trends), and 586-587 ([REDACTED]). MicroTech received an Excellent consensus rating for subfactors 1 (Understanding of the Requirement), 3 (Corporate Experience) and 4 (Start-Up Plan and Phase-Out Plan), and a Good consensus rating for subfactor 2 (Key Personnel Experience). AR 582. Med Trends received a [REDACTED] consensus rating for subfactors 1 and 2, a [REDACTED] consensus rating for subfactor 3, and an [REDACTED] consensus rating for subfactor 4. AR 584.

With respect to Med Trends’ Corporate Experience subfactor rating, [REDACTED] [REDACTED] assigned a [REDACTED] rating and [REDACTED] assigned an [REDACTED] rating. AR 584. The reason for these ratings was stated as follows: “[REDACTED] [REDACTED].” AR 585; see also AR 364 (Med Trends proposal section addressing the “Corporate Experience” subfactor). In contrast, MicroTech’s proposal section addressing the “Corporate Experience” subfactor consisted of [REDACTED] contracts of “similar nature, scope, complexity, and difficulty to that which will be performed” for the DOL. AR 249-58.

The Independent Government Estimate for the DOL requirements was \$ [REDACTED]. AR 2-3. Med Trends’ total price was \$ [REDACTED] and MicroTech’s total price was

\$39,886,717.88. AR 596.<sup>1</sup> The DOL prepared a Price Analysis report stating that Med Trends' price was [REDACTED] % less than the Government estimate whereas MicroTech's price was [REDACTED] than the Government estimate. AR 596. The report further stated as follows:

Based on the IGCE, [REDACTED], [REDACTED], MicroTech, Inc.'s price proposal is more in line with the level and scope of work required. [REDACTED] and MED Trends, Inc. price proposals are so much less than the IGCE it is possible that both vendors underestimated the depth of work required. Accepting [REDACTED]'s or MED Trends, Inc.'s price proposal would expose the Government to a high level of risk.

Based on the above and all other factors considered, MicroTech, Inc.'s price proposal in the amount of \$39,886,717.88 is considered to be fair and reasonable.

AR 596-97.

The DOL's Award Decision Memorandum, dated June 8, 2011 and signed by the Contracting Officer and Contract Specialist, set forth the consensus ratings for the four technical subfactors for each of the three proposals, and concluded that "[b]ased on the above technical evaluation award to MicroTech, Inc. offers the Best Value to the government." AR 600. The Award Decision Memorandum also set forth the Past Performance ratings for each offeror:

[REDACTED] for Med Trends and Low Risk for both MicroTech and [REDACTED]. AR 601.

With respect to Price, the Award Decision Memorandum stated that the proposals were analyzed and compared to the Government estimate to determine price reasonableness, and reiterated the conclusions set forth in the Price Analysis report. AR 601. Finally, the Award Decision Memorandum stated: "Based on the above the contracting officer has determined that it is in the

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<sup>1</sup> The third offeror's price was \$ [REDACTED], AR 596, and its technical proposal received three [REDACTED] consensus ratings and one [REDACTED] consensus rating. AR 586.

best interest of the Government to award a Firm Fixed Price contract under RFQ547327 to MicroTech, Inc. for the total aggregate amount of \$39,886,717.88. AR 601.

The contract was awarded to MicroTech on June 10, 2011, AR 602, and notifications of the award were sent to Med Trends and [REDACTED] on that same date. AR 632 and 633.

Written post-award debriefings were also provided to Med Trends and [REDACTED]. AR 634-41. The written debriefing for Med Trends described the evaluation process, the ratings assigned to Med Trends' technical proposal under each subfactor as well as a description of strengths and weaknesses, the Past Performance rating, and the DOL's assessment of Med Trends' price. AR 634-36. The debriefing concluded with the following: "Based on a comparison with the IGCE, MED Trends, Inc.'s price proposal underestimated the depth of work required. Accepting MED Trends, Inc.'s price proposal for a Firm Fixed Price order would expose the Government to a high level of risk." AR 636.

### **III. THE COURT LACKS SUBJECT MATTER JURISDICTION OF PLAINTIFF'S PROTEST**

There is no question that Med Trends is protesting the DOL's issuance of a task order to MicroTech against the VETS GWAC Indefinite-Delivery, Indefinite-Quantity ("IDIQ") contract; that the task order award exceeds \$10 million; and that Med Trends' Complaint does not allege that the task order increases the scope, period, or maximum value of the VETS GWAC contract under which the order was issued. Under such circumstances, but for the "sunset" provision in the Federal Acquisition Streamlining Act ("FASA"), 41 U.S.C. § 4106(f)(3), the Court would lack subject matter jurisdiction over this protest case. *See DataMill, Inc. v. United States*, 91 Fed. Cl. 740 (2010). Plaintiff asserts at Paragraph 12 of its Complaint that its protest is not barred by FASA because the entire subsection (f) prohibiting task order protests with two limited

exceptions expired on May 27, 2011, and Plaintiff relied on a recent GAO decision, *Technatomy Corporation*, B-405130, June 14, 2011, 2011 CPD ¶ 107, that reached the same conclusion.

As stated by this court in *DataMill*, “whether the court possesses jurisdiction to decide the merits of a case is a threshold matter” and it is Plaintiff’s burden to establish the court’s jurisdiction to decide its claims. *DataMill*, 91 Fed. Cl. at 750-51. “If the court finds that it lacks subject matter jurisdiction, then it must dismiss the claim.” *Id.* at 751 (citing *Matthews v. United States*, 72 Fed. Cl. 274, 278 (2006)). Here, the Court does not need to decide whether the “sunset” provision in FASA completely eliminated the prohibition against task and delivery order protests or only the provisions giving the GAO exclusive jurisdiction over task orders valued in excess of \$10 million that were added to FASA along with the “sunset” provision. This is because the VETS GWAC contract between the Government and the SDVOSBC contractors, including Med Trends, includes Clause G.10, entitled “Protests And Complaints (MAR 2009),” that tracks the FASA prohibitions, among other things, and provides that “[p]rotests of orders in excess of \$10 million may only be filed with the Government Accountability Office, in accordance with the procedures.” AR 58.

This court has held that “[g]enerally, the parties to a contract may voluntarily waive certain rights, including the right to receive an impartial and independent federal adjudication, otherwise available to the parties under law.” *RCS Enterprises, Inc. v. United States*, 46 Fed.Cl. 509, 515 (2000) (citing *Burnside-Ott Aviation Training Ctr. v. Dalton*, 107 F.3d 854 (Fed. Cir. 1997)). By executing the VETS GWAC contract, Med Trends agreed to waive its right to challenge task order awards except under limited circumstances not applicable to Med Trends’ Complaint. While it is also true that a contract clause or provision in a government contract that violates or conflicts with a federal statute is invalid or void (*see RCS Enterprises*, 46 Fed. Cl. at

515-16 (citing *American Airlines, Inc. v. Austin*, 75 F.3d 1535, 1538 (Fed. Cir. 1996)), Clause G.10 in the VETS GWAC contract neither violates nor conflicts with FASA regardless of how the “sunset” provision is interpreted. If FASA’s prohibitions against task order protests completely expired on May 27, 2011, Clause G.10 cannot be deemed to violate or conflict with a statute that is silent on the issue. On the other hand, if FASA’s blanket prohibition with the one limited exception allowing protests against increases in scope, period or maximum value did not expire on May 27, then Clause G.10 is consistent with FASA in that regard and cannot be deemed to violate or conflict with the expired exception to the prohibition for orders in excess of \$10 million.

Accordingly, Med Trends contractually waived its right to protest the task order award to MicroTech in this Court, regardless of whether the task order prohibitions in FASA expired on May 27, 2011. Since the Court lacks subject matter jurisdiction over Plaintiff’s claims, this action must be dismissed. *See* COFC Rule 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action”).

#### **IV. PLAINTIFF LACKS STANDING AND ITS COMPLAINT FAILED TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

The Court also lacks jurisdiction over this action because the Plaintiff lacks standing to bring this protest and its Complaint failed to state any claims upon which relief can be granted. Standing is clearly a “threshold” jurisdictional requirement. *Myers Investigative and Security Services, Inc. v. United States*, 275 F.3d 1366, 1369 (Fed. Cir. 2002). In this regard, the court recently described its standard of review in considering a motion to dismiss for lack of standing, as follows:

Under the Administrative Dispute Resolution Act, plaintiffs in bid protest actions are limited to those who are actual or prospective

bidders and who can demonstrate that they possess “a direct economic interest.” *Id.* (quoting *Rex Serv. Corp. v. United States*, 448 F.3d 1305, 1307 (Fed. Cir. 2006)). The showing of “direct economic interest” amounts to a showing of prejudice. “[T]he Federal Circuit has construed the second element, the ‘direct economic interest’ prong, to mean that a successful protestor must also establish that the errors complained of caused prejudice.” *Textron, Inc. v. United States*, 74 Fed.Cl. 277, 283 (2006). The hurdle is not trivial. “[A] bid protester must have a substantial chance of receiving an award in order to have an economic interest in it and therefore standing to file a bid protest.” *Labatt Food Service, Inc. v. United States*, 577 F.3d 1375, 1379 (Fed. Cir. 2009).

*Commissioning Solutions Global, LLC v. United States*, 97 Fed.Cl. 1, 7 (2011) (holding that the protestor lacked standing to file protests with regard to two contracts because the procurement errors alleged by the protestor did not prejudice its chance to receive the award of either contract). Similarly, Med Trends has failed to establish that it had a substantial chance of receiving the task order award notwithstanding the alleged procurement errors.

Plaintiff’s Complaint alleges that the DOL deprived Med Trends of the fair opportunity to compete required by 41 U.S.C. § 4106(d), the DOL violated FAR 16.505(b)(iv)(C) by failing to make an award in accord with the announced relative importance of the evaluation factors, and the DOL’s written justification for its best value award, required by 41 U.S.C. § 4106(d)(4) and FAR 16.505(b)(iv)(D), was arbitrary and capricious. Complaint, ¶¶ 5, 23, 25, 27 and 29.

Plaintiff also alleges that “Defendant DOL’s Contracting Officer’s Price Realism analysis and assessment of performance risk for MED Trends’ Quotation is clearly premised on critical miscalculations, and it makes an irrational assumption that the difference in firm fixed-price for the two Quotations is explained solely by MED Trends’ failure to propose a sufficient number of personnel. *DMS All-Star Joint Venture v. United States*, 90 Fed. Cl. 653, 665 (2010).”

Complaint, ¶ 21. These alleged procurement errors did not prejudice Plaintiff’s chances to

receive the task order award under the clear evaluation criteria set forth in the RFQ. Moreover, the record refutes Plaintiff's allegations of error.

Regardless of the validity of DOL's concerns about Med Trends' extremely low price, Med Trends was not eligible for award of the task order because its technical proposal received a [REDACTED] rating under the Corporate Experience subfactor. As noted above, the RFQ explicitly stated that a "Good" rating for Factor I and its associated technical subfactors was a prerequisite for award. AR 94 and 141. Accordingly, the DOL could not award the task order to Med Trends (or to [REDACTED]) because they received less than a "Good" rating for one or more technical subfactors. In addition, Plaintiff did not contest the [REDACTED] rating assigned to the Corporate Experience subfactor, likely because the rating was clearly warranted in view of the [REDACTED] provided in the Corporate Experience section of Med Trends' proposal. Consequently, the Court should dismiss this action. *E.g., HomeSource Real Estate Asset Services, Inc. v. United States*, 94 Fed.Cl. 466 (2010) (holding that the plaintiff lacked standing because it was not prejudiced by the government's decision and did not have a substantial chance of receiving award where the agency had rated the plaintiff's proposal as technically unacceptable and the plaintiff did not challenge the underlying evaluation of its proposal); *Ironclad/EEI v. United States*, 78 Fed.Cl. 351, 359-63 (2007) (holding that the plaintiff lacked standing because it did not establish prejudice or a substantial chance of receiving an award).

It is irrelevant that the Award Decision Memorandum did not specifically cite Med Trends' [REDACTED] rating for the Corporate Experience subfactor as the basis for not awarding the task order to Med Trends. While the Memorandum identified the subfactor ratings for each of the three offerors and, on the basis of those ratings, stated that award to MicroTech "offers the

Best Value to the government,” AR 600, the Memorandum also concluded that Med Trends’ much lower price proposal “would expose the Government to a high level of risk.” AR 601. Plaintiff has alleged that this conclusion was arbitrary and capricious because the difference between MicroTech’s and Med Trends’ prices “is in the tens of millions of dollars,” which difference “cannot be explained, as the Defendant DOL’s Contracting Officer would have it, solely by a difference in proposed staffing levels.” Complaint, ¶¶ 18-19. Even assuming, *arguendo*, that the DOL’s conclusion regarding Med Trends’ price was arbitrary and capricious, Med Trends’ proposal still was ineligible for award. The GAO has held that even if the reasons initially advanced by an agency to reject an offeror’s proposal were improper, “an agency may justify its actions on new grounds so long as those grounds would have provided proper support at the time the action was taken.” *Bannum, Inc.*, B-271075 *et al.*, May 22, 1996, 96-1 CPD ¶ 248; *see also Harris Corporation*, B-274566, Nov. 27, 1996, 96-2 CPD ¶ 205 fn.4 (“During the course of a protest, an agency may justify its rejection of an offeror’s proposal on the basis of new or additional grounds so long as those grounds would have provided proper support at the time the proposal was rejected as technically unacceptable”).<sup>2</sup> Here, the record establishes that the DOL’s rejection of Med Trends’ proposal on the “new” ground that it did not receive at least a “Good” rating for each technical subfactor, as required by the RFQ, is entirely appropriate and was supported at the time the DOL made its award decision.

Based on the foregoing, Plaintiff has not demonstrated – nor can it demonstrate – that it was prejudiced by the DOL’s actions or that it had a substantial chance of receiving the task order award. Thus, this action should be dismissed due to Plaintiff’s lack of standing. In

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<sup>2</sup> It is well established that, while not binding on the court, decisions of the Comptroller General are “expert opinions” that the court should prudently consider. *Femme Comp Inc. et al. v. United States*, 83 Fed.Cl. 704, 746 fn. 28 (2008).

addition, Plaintiff has failed to state a valid basis upon which relief can be granted for the above reasons and based on the alleged procurement errors described in the Complaint. Plaintiff has alleged specific statutory and regulatory violations; however, it has failed to demonstrate how the DOL's conduct and award decision constituted such violations or that the alleged procurement errors prejudiced Med Trends' competitive position.

First, Plaintiff alleged that the DOL violated the "fair opportunity to compete" requirements at 41 U.S.C. §4106(d), which sets forth five minimum requirements that must be met for purposes of providing "all contractors a fair opportunity to be considered" for each task or delivery order to be issued under multiple award contracts. Plaintiff's Complaint has not alleged or shown, however, that the DOL:

(1) failed to provide "a notice of the task or delivery order that includes a clear statement of the executive agency's requirements." In fact, such notice was provided. AR 92, 93-203.

(2) failed to provide vendors with "a reasonable period of time to provide a proposal in response to the notice." In fact, vendors were given more than 30 days in which to provide a proposal. AR 92 and 138.

(3) failed to disclose "the significant factors and subfactors, including cost or price, that the executive agency expects to consider in evaluating proposals, and their relative importance." In fact, the DOL provided the required information. AR 93-99, 140-46.

(4) failed to provide, "in the case of an award that is to be made on a best value basis, a written statement documenting (A) the basis for the award; and (B) the relative importance of quality and price or cost factors." In fact, the DOL did prepare such a written statement documenting its best value award. AR 600-01, and referencing RFQ "Basis for Award" criteria (AR 93-94 and 140-410).

(5) failed to provide "an opportunity for a post-award debriefing consistent with the requirements of section 3704 of this title." In

fact, the DOL provided post-award debriefings to the two disappointed offerors. AR 634-37 and 638-41.

Instead, Plaintiff's Complaint asserts that because the DOL did not award the task order to Med Trends on the basis of its substantially lower price, the DOL failed to provide Med Trends with a fair opportunity to compete for the task order. As shown above, the DOL did all that it was required to do to afford Med Trends the fair opportunity to compete in accordance with FASA.

Second, Plaintiff's Complaint alleged that the DOL violated FAR 16.505(b)(iv)(C) by failing to make an award in accordance with the announced relative importance of the evaluation factors. As a preliminary matter, the referenced FAR section in effect at the time the RFQ was issued in February 2011 does not exist, and the only reference in FAR 16.505 to the relative importance of evaluation factors is at subsection (b)(1)(iii)(C), which reiterates the statutory requirement that agencies disclose the significant factors and subfactors to be evaluated and their relative importance.<sup>3</sup> As noted above, the significant factors and subfactors (providing that the technical and past performance factors are significantly more important than price and specifying that at least a "Good" rating must be achieved for each technical subfactor in order to be eligible for award) were clearly disclosed. AR 93-99, 140-46. Moreover, the record establishes that the DOL faithfully adhered to the announced relative importance of the evaluation factors. Again, Plaintiff's Complaint asserts that because the DOL did not award the task order to Med Trends on the basis of its substantially lower price, the DOL ignored the stated evaluation and award scheme. On the contrary, the record establishes that MicroTech's technical and past performance proposals were higher rated and significantly superior to Med Trends' proposals

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<sup>3</sup> It appears that Plaintiff was attempting to rely on a revised version of FAR 16.505 that became effective on May 16, 2011, but even then its citation was inaccurate. Nonetheless, the substantive provision upon which Plaintiff appears to be relying is essentially the same in both FAR versions.

and that, as contemplated by the RFQ, the DOL selected MicroTech's proposal as the best value on the basis of its superior technical features, low-risk past performance rating, and fair and reasonable price.

Finally<sup>4</sup>, Plaintiff's Complaint asserts that the DOL violated FAR 16.505(b)(iv)(D) on the basis that the written award justification was arbitrary and capricious due to the "tens of millions of dollars" difference between Med Trends' and MicroTech's prices that "cannot be explained solely by a difference in proposed staffing levels." Complaint, ¶ 27. Again, the referenced FAR section in effect when the RFQ was issued does not exist; rather, it appears that Plaintiff is referring to FAR 16.505(b)(1)(iii)(D).<sup>5</sup> This subsection provides that the fair opportunity requirement must include, for best value awards, "a written statement documenting the basis for award and the relative importance of quality and price or cost factors." The record establishes that the DOL complied with this requirement in that the Award Decision Memorandum identified the technical subfactor ratings and past performance ratings for each proposal, referenced the evaluation criteria in the RFQ's "Basis For Award" section as the basis for the determination that MicroTech's proposal offered the best value, and documented the reasons for the DOL's concerns regarding Med Trends' price that was █% lower than the Government's estimate. AR 600-01. While the Memorandum did not explain that the "tens of millions of dollars" pricing difference was solely attributable to "a difference in proposed staffing levels," it

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<sup>4</sup> Plaintiff's Complaint also alleges that the DOL breached its obligations under FAR 1.102(b)(3), 1.102-2(c)(3) and 1.602-2(b) to act with integrity, fairness, and openness, and to treat Med Trends fairly, when the DOL failed to afford Med Trends a fair opportunity to compete for the task order award. Complaint, ¶¶ 8 and 29. Since Plaintiff has failed to state a valid claim that the DOL failed to provide Med Trends with a fair opportunity to compete, these breach allegations similarly must fail.

<sup>5</sup> See footnote 3 above.

did indicate that the difference was possibly due to Med Trends’ underestimating “the depth of work required.” AR 601.

Moreover, as shown in Table 1 below, the record reflects that the large price disparities between Med Trends’ pricing as compared to the Government’s and MicroTech’s pricing were in fact primarily attributable to a difference in proposed staffing levels.

Table 1: Proposed Staffing Levels Using A Full-Time Equivalent Headcount

	Base Year	Option 1	Option 2	Option 3	Option 4
Gov’t Estimate					
MicroTech					
Med Trends					

AR 3, 301, and 449-53. Since the Government estimate “ [REDACTED] [REDACTED],” there was simply nothing arbitrary and capricious about the DOL’s conclusion in the Award Decision Memorandum that Med Trends’ substantially lower price possibly reflected its underestimating of the depth of work required. AR 601.

In summary, Plaintiff clearly lacks standing to bring this protest because, under the explicit terms of the RFQ, it is ineligible for award due to the [REDACTED] rating – which Med Trends did not challenge in its Complaint – for the Corporate Experience subfactor. While the Court’s inquiry should end here, it is also clear that Plaintiff’s Complaint has failed to state any valid bases upon which relief can be granted. Indeed, the record reflects that MicroTech’s proposal received higher ratings under both the Technical Capability and Past Performance factors, which were significantly more important than price, and the DOL selected MicroTech’s superior proposal with a fair and reasonable price as representing the best value in accordance with the RFQ’s award scheme. Med Trends’ Complaint represents nothing more than a veiled attempt, which cannot succeed, to convert the evaluation criteria and award scheme to a lowest price, technically acceptable source selection process.

**V. CONCLUSION**

For the reasons stated above, and as supported by the Administrative Record, MicroTech respectfully requests that the Court dismiss the Plaintiff's Complaint on the grounds that the Court lacks subject matter jurisdiction over this action, the Plaintiff lacks standing and the Complaint fails to state any basis upon which relief can be granted.

Respectfully submitted,

s/ Katherine S. Nucci

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Counsel for MicroTechnologies, LLC

Dated: July 20, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20<sup>th</sup> day of July, 2011, a copy of the foregoing “MicroTechnologies, Inc.’s Motion To Dismiss Plaintiff’s Complaint For Lack Of Jurisdiction, For Failure To State A Claim Upon Which Relief Can Be Granted, And Due To Plaintiff’s Lack Of Standing, And Support Memorandum Of Law” was filed electronically. I understand that notice of this filing will be sent to all parties by operation of the Court’s electronic filing system. Parties may access this filing through the Court’s system.

s/ Katherine S. Nucci