BMI EXHIBIT 5: Procurement and procurement integrity laws applying to the U.S. Food and Drug Administration (FDA)

Under the **Federal Activities Inventory Reform Act (FAIR), P.L. 105-270**, and implementing **Office of Management and Budget Circular A-76**, the production of food risk management computer automated tools are not an inherently governmental function.

**The Competition in Contracting Act (CICA) of 1984 (41 U.S.C. 253)** governs competition in Federal procurement contracting. Any procurement contract not entered into through the use of procurement procedures expressly authorized by a particular statute is subject to CICA. CICA requires that contracts be entered into after “full and open competition through the use of competitive procedures” unless certain circumstances exist that would permit agencies to use noncompetitive procedures. There exist seven such circumstances permitting other than full and open competition. To exercise any such an exemption requires a rigorous and documented approval process before a Federal non-competitive contract can be let. The U.S. Government sought no such exemption in the matter of FoodQuestTQ LLC.

**The Federal Acquisition Streamlining Act (FASA) of 1994** establishes a “preference” for the procurement of commercial items, which are generally not subject to full and open competition under CICA. **The Federal Acquisition Reform Act (FARA) of 1996** amended **the Federal Acquisition Regulation (FAR)** to “ensure that the requirement to obtain full and open competition is implemented in a manner that is consistent with the need to efficiently fulfill the Government’s requirements.” Open and fair competition for the computer automated food risk management tools desired by the FDA would not have negatively impacted the efficiency of the Agency’s operations. Moreover, in the case of FoodQuestTQ LLC, the pursuit of a sole source contract could have been accomplished quickly and efficiently.

**5 C.F.R. Part 2635, Subpart E**, requires that U.S. Government employees act in an impartial manner. In the matter of FoodQuestTQ LLC, FDA and DHHS officials placed the defense of their own U.S. Government Departments ahead of their duty of good faith and fair dealing thus compromising their impartiality.

**P.L. 96-303, Code of Ethics for Government Service**, also requires that U.S. Government employees place their loyalty to the Constitution and the laws of the United States above their loyalty to their department. U.S. Government employees demonstrated their partiality in the matter of FoodQuestTQ LLC by participating in the violation of Federal procurement laws specifically as they relate to: 1) the fair and open competition provisions of The Competition in Contracting Act (CICA) of 1984 (41 U.S.C. 253); 2) the Federal Acquisition Streamlining Act (FASA) of 1994; 3) the Federal Acquisition Reform Act (FARA) of 1996, as amended; 4) Federal Activities Inventory Reform Act (FAIR), P.L. 105-270; 5) implementing Office of Management and Budget Circular A-76, and; 6) the Federal Acquisition Regulations (FARS).

**5 C.F.R. Part 2635, Subpart G**, requires that U.S. Government employees not misuse their positions of authority with the U.S. Government. FDA and DHHS employees misused their positons of authority by: engaging in criminal misconduct that includes violations of : 1) Federal procurement and procurement integrity law; 2) material and fundamental express and implied contracts with FoodQuestTQ LLC; 3) the Code of Ethics for Government Service, P. L. 96-303; 4) the Racketeer Influenced and Corruption Organizations Act (RICO) as codified at Title 18 U.S.C. §1961 et seq.; 5) Sherman Antitrust law as codified at 15 U.S.C. §§ 1-7 and Title 18 U.S. Code § 1031, and; 6) a large body of law relating to the misappropriation of FoodQuestTQ LLC owned intellectual property.