

# AUDIT REPORT

## SBA NEEDS TO STRENGTHEN ITS INFORMATION TECHNOLOGY PROCUREMENT PRACTICES TO ENSURE ADEQUATE PLANNING AND FINANCIAL OVERSIGHT





# EXECUTIVE SUMMARY

Audit Report  
No. 16-05  
December 17, 2015

## SBA NEEDS TO STRENGTHEN ITS INFORMATION TECHNOLOGY PROCUREMENT PRACTICES TO ENSURE ADEQUATE PLANNING AND FINANCIAL OVERSIGHT

### What OIG Reviewed

For fiscal years (FY) 2013 and 2014, the Small Business Administration (SBA) obligated \$161.7 million on new contract actions, of which \$109 million (67 percent) were information technology (IT) product or service contracts.

We reviewed 12 contracts with estimated total contract values of \$98.4 million. Of these, six (with estimated total contract values of \$50.7 million) were awarded by SBA contracting officers, and six (with estimated total contract values of \$47.7 million) were awarded by the Department of the Interior's (DOI) Interior Business Center (IBC) on behalf of SBA.

Our objectives were to determine whether SBA's procurement practices for contracts to acquire IT products and services: (1) followed Federal Acquisition Regulations (FAR) and SBA's *Acquisition Standard* for ensuring fair and reasonable contract prices, (2) complied with Federal regulations when using interagency assisted acquisitions, and (3) ensured funds were used in compliance with Federal appropriations regulations.

### What OIG Found

We found that SBA personnel did not adequately plan for contracts and inconsistently evaluated vendor quotes while performing a best value determination for one contract. If these problems persist, SBA will be unable to determine whether it is receiving its IT deliverables at fair and reasonable prices.

In addition, for the six contracts awarded by IBC, SBA did not comply with FAR requirements when determining whether using IBC was the best procurement approach. As a result, SBA spent over \$600,000 in service fees to use IBC for the six contracts we reviewed. SBA could incur an additional \$1.3 million in contract services fees if the six contracts are fully exercised.

We also found that SBA funded 8 of the 12 contracts—with a total estimated value of \$64.3 million—using a variety of SBA appropriations that Congress authorized for specific purposes without providing justification or documentation.

### OIG Recommendations

We provided 13 recommendations to improve SBA's planning and oversight of IT acquisitions. We recommend that SBA establish and implement clear, written policies and procedures for: (1) ensuring the procurement process includes adequate internal controls to separate acquisition personnel duties, (2) analyzing contractor-proposed costs to ensure prices are fair and reasonable, and (3) obligating funds for SBA contracts. We also recommended that SBA require contracting officers to document and analyze significant cost discrepancies between contractor-proposed prices and independent Government cost estimates (IGCEs), especially when negotiating sole-source contract award actions. SBA should also provide training to its contracting and program personnel on 8(a) Business Development Program contracting limitations and the appropriate use of the Non-Manufacturer Rule. Additionally, SBA should revise its guidance to ensure that using interagency assisted acquisitions is in fact the best procurement approach.

### Agency Response

SBA management's planned actions resolve 9 of our 13 recommendations. SBA plans on updating its *Acquisition Standard* to address the documentation of IGCEs and cost discrepancies between contractor proposed prices and IGCEs. Additionally, SBA will provide training to its contracting personnel on its policy updates, 8(a) Program contracting limitations, and on the Non-Manufacturing Rule. SBA will also develop procedures to standardize review processes for assisted acquisitions. SBA plans to issue written guidance to program offices on use of funds, where multiple sources of funding are requested and will require justification for types of funds used in the advanced acquisition strategy document for each requirement.

However, SBA did not agree that it needed to improve the separation of duties in the acquisition process. SBA also did not agree to perform adequate best procurement approach determinations when deciding whether to exercise contract options on the IBC contracts. Moreover, GAO opined that the appropriations at issue were available for use as applied by SBA; therefore, we closed one of the recommendations.



**U.S. SMALL BUSINESS ADMINISTRATION  
OFFICE OF INSPECTOR GENERAL  
WASHINGTON, D.C. 20416**

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**Final Report Transmittal**  
Report Number: 16-05

**DATE:** December 17, 2015

**TO:** Maria Contreras-Sweet  
Administrator

Douglas Kramer  
Deputy Administrator

Tami Perriello  
Associate Administrator for Performance Management and  
Chief Financial Officer

**FROM:** Troy M. Meyer /s/  
Assistant Inspector General for Audit

**SUBJECT:** *SBA Needs to Strengthen its Information Technology Procurement Practices to Ensure Adequate Planning and Financial Oversight*

This report presents the results of our audit of the Small Business Administration's procurement practices for information technology (IT) products and services. The overall report is unresolved. We previously furnished copies of the draft report and requested written comments on the recommendations. SBA management's comments are appended and were considered in finalizing the report.

In accordance with Office of Management and Budget Circular A-50, Revised, audit reports are to be resolved within a 6-month time frame and can be closed only after all agreed-upon actions are completed. The Inspector General Act of 1988, as amended, requires us to report to Congress any unresolved audit reports that are over 6 months old. Therefore, please provide us within 30 days your response concerning specific actions completed or alternative corrective actions proposed on the recommendations.

We appreciate the cooperation that we received from your staff during our audit. Please contact me if you would like to discuss this report or any related issues.

cc: Nick Maduros, Chief of Staff  
Matthew Varilek, Chief Operating Officer  
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## Table of Contents

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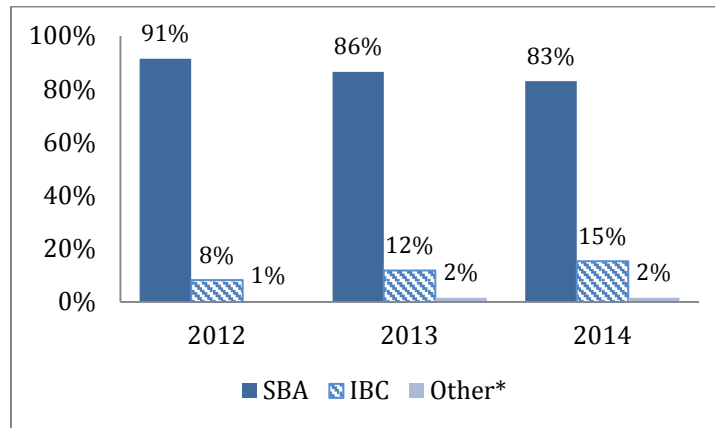
Introduction.....	1
Prior Audit Coverage .....	2
Objectives .....	2
Finding 1: SBA Contracting Practices for Acquiring IT Products and Services Need to Ensure Fair and Reasonable Contract Prices .....	3
Inadequate Acquisition Planning .....	3
Inadequate Best Value Determination .....	4
Acquisition Deficiencies.....	4
Recommendations.....	8
Finding 2: SBA Needs to Ensure Using IBC is the Best Procurement Approach .....	9
SBA Program Officials May Be Utilizing IBC Unnecessarily .....	9
SBA and IBC Part A of the Interagency Agreement May Result in Excess Service Fees.....	11
SBA’s Informal Review Process of Part B Documents Did Not Identify Potential Funding Misuse.....	11
Recommendations.....	12
Finding 3: SBA’s Contract Funding Practices are Inconsistent and Undocumented .....	14
Inconsistent and Undocumented Methodologies .....	15
SBA’s Application of Disaster Funds to the LMAS Project Referred to GAO.....	16
Recommendations.....	16
Analysis of Agency Response .....	17
Appendix I: Scope and Methodology.....	23
Review of Internal Controls.....	23
Appendix II: Schedule of Dollar-Related Findings.....	25
Appendix III: SBA’s Split Funding Explanations.....	26
Appendix IV: Agency Comments.....	28

## Introduction

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During FYs 2013 and 2014, SBA obligated \$247.5 million on contract actions,<sup>1</sup> of which, 65 percent of the contracts were new contracts with obligated values of \$161.7 million.<sup>2</sup> Contracts with information technology (IT) product or service requirements accounted for \$109 million, or 67 percent of the total obligated.<sup>3,4</sup> While SBA contracting officers awarded most of the contracts and obligated the largest amount of SBA's funds, since FY 2012, SBA program offices have used the Department of the Interior's (DOI) Interior Business Center (IBC) at an increasing rate (see Table 1). We expect this trend to continue, as SBA's Associate Administrator for Performance Management and Chief Financial Officer (CFO) has told us that using IBC results in timely contract awards, more qualified vendors, and more competition among bidders resulting in lower prices.<sup>5</sup>

**Table 1. Percentage of SBA Funds Obligated by Contract Award Agency FYs 2012-2014**



\*The "Other" category includes SBA-assisted acquisitions awarded by the following Federal agencies: the General Services Administration, the Department of Health and Human Services, and the Office of Personnel Management.

Source: Generated by OIG based on Federal Procurement Data System-Next Generation (FPDS-NG) data.

From May 2012 through FY 2014, IBC awarded 48 contracts on behalf of SBA with an obligated contract value of \$45.2 million.<sup>6</sup> Based upon the total amount of the funds provided by SBA for IBC interagency assisted acquisitions through FY 2014, SBA reportedly paid \$2.1 million in fees. We

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<sup>1</sup> According to FAR 4.601, a contract action means any oral or written action that results in purchasing, renting, or leasing supplies or equipment, services, or construction using appropriated dollars over the micro-purchase threshold, or modifications to these actions regardless of dollar value.

<sup>2</sup> OMB Circular A-11, Section 20.3, defines an obligation as "a legally binding agreement that will result in outlays, immediately or in the future."

<sup>3</sup> Based on the North American Industry Classification System (NAICS) codes reported in FPDS-NG that SBA and our audit team identified as associated with IT contracts.

<sup>4</sup> A contract meets a requirement and formalizes the agreement between two or more parties.

<sup>5</sup> SBA's official title for the CFO is the Associate Administrator for Performance Management and Chief Financial Officer. The CFO was appointed on February 22, 2015. In the announcement to the Agency on March 2, 2015, SBA's Administrator stated the CFO "is responsible for overseeing performance management, budgeting, financial modeling, financial administration and accountability, financial systems, financial operations and accounting, internal controls and acquisition. She [the CFO] serves as the SBA's Performance Improvement officer and the Chief Acquisition Officer." Prior to her official appointment, this individual was "acting" as the Associate Administrator for Performance Management and Chief Financial Officer since February 1, 2014.

<sup>6</sup> We calculated the obligated value for the 48 contracts based on the data provided by SBA officials and the contract actions reported in FPDS-NG.

estimate this figure could increase to over \$4.1 million in contract service fees, if all contract options are exercised.<sup>7</sup>

## Prior Audit Coverage

In February 2011, we reported that SBA inadequately planned and inappropriately awarded two 8(a) sole-source contracts for the procurement of IT hardware and software.<sup>8</sup> Specifically, the contracting officer awarded the sole-source contracts without first ensuring an appropriate acquisition plan had been implemented and approved for this requirement. Also, the report found that the sole-source contracts did not qualify as 8(a) sole-source procurements under the Non-manufacturer Rule.<sup>9</sup> Additionally, in December 2012, we reported that SBA contracting personnel did not ensure the Agency obtained IT hardware and software at fair and reasonable prices.<sup>10</sup> Further, in February 2014, we reported that SBA did not follow Federal regulations and guidance in acquiring the OneTrack system.<sup>11</sup> Specifically, the Agency did not use proper contracting techniques and did not properly manage the contract. The report also revealed that SBA program offices and the Office of the Chief Information Officer (OCIO) needed to improve their coordination when planning and acquiring IT products and services.

## Objectives

Our objectives were to determine whether SBA's procurement practices for contracts awarded in FYs 2013 and 2014 to acquire IT products and services: (1) followed Federal Acquisition Regulations (FAR) and SBA's *Acquisition Standard* for ensuring fair and reasonable contract prices, (2) complied with Federal regulations when using interagency assisted acquisitions, and (3) ensured funds were used in compliance with Federal appropriations regulations. We reviewed 12 contracts with estimated total contract values of \$98.4 million. Of these, six (with estimated total contract values of \$50.7 million) were awarded by SBA contracting officers and six (with estimated total contract values of \$47.7 million) were awarded by IBC on behalf of SBA.<sup>12</sup>

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<sup>7</sup> We estimated the fees based on the reported contract values in FPDS-NG if all options are exercised for these 48 contracts.

<sup>8</sup> *SBA's Procurement Information Technology Hardware and Software Through Isika Technologies* (Audit Report 11-08, February 2011).

<sup>9</sup> According to FAR 19.001, "Non-manufacturer Rule" means that a contractor under a small business set-aside or 8(a) contract shall be a small business under the applicable size standard and shall provide either its own product or that of another domestic small business manufacturing or processing concern.

<sup>10</sup> *The SBA Mismanaged Certain 8(a) Information Technology Contracts* (Audit Report 13-08, December 2012).

<sup>11</sup> *The SBA Did Not follow Federal Regulations and Guidance in the Acquisition of the OneTrack System* (Audit Report 14-10, February 2014).

<sup>12</sup> As of FY 2014, the obligated value of the 12 contracts totaled \$31.3 million. Of the 12 contracts we reviewed, 6 contracts awarded by SBA had obligated values that totaled \$17.2 million, and 6 contracts awarded by IBC contracting officers on behalf of SBA had obligated values which totaled \$14.1 million. See Appendix I for more details regarding the scope and methodology for our selections.

## **Finding 1: SBA Contracting Practices for Acquiring IT Products and Services Need to Ensure Fair and Reasonable Contract Prices**

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SBA program and acquisition personnel did not properly oversee acquisitions to ensure fair and reasonable contract prices when acquiring IT products and services. Specifically, SBA personnel did not adequately plan for contracts and inconsistently evaluated vendor quotes while performing a best value determination for one contract. Overall, these issues could have been prevented if SBA had (1) ensured contracting and program personnel adequately documented Independent Government Cost Estimates (IGCEs),<sup>13</sup> (2) provided guidance on how to prepare and document price reasonableness—which is not currently provided in SBA's *Acquisition Standard*, and (3) ensured contracting and program personnel had a clearer understanding of sole-source contract limitations and the regulations surrounding best value determinations. If these problems persist, SBA will be unable to determine whether it is receiving its necessary IT deliverables at fair and reasonable prices.

### **Inadequate Acquisition Planning**

The Federal Acquisition Regulation (FAR) states that acquisition planning should begin as soon as an agency need is identified, preferably well in advance of the fiscal year in which contract award or order placement is necessary. Program personnel with anticipated requirements should avoid having contracts issued on an urgent basis or with unrealistic delivery or performance schedules, since it generally restricts competition and increases prices.<sup>14</sup> The acquisition plan should also describe how the agency will seek, promote, and sustain competition throughout the course of the acquisition. Additionally, it should discuss the rationale for the selection of the contract type and source selection procedures.<sup>15</sup> However, we found that SBA contracting officers awarded contracts using 8(a) sole source procedures by dividing requirements, overlooking qualified vendors, and selecting the wrong contract type.<sup>16</sup>

Furthermore, as part of acquisition planning, SBA's *Acquisition Standard* requires program offices to prepare IGCEs.<sup>17</sup> However, SBA's *Acquisition Standard* does not contain sufficient guidance for documenting the basis of the IGCE. While all six contracts we reviewed contained an IGCE, SBA program officials did not have adequate supporting documentation to justify the methodology, assumptions, or rationale they used to develop their IGCEs. In addition, program officials failed to identify pertinent labor categories when developing their IGCE for one contract. Without adequate supporting documentation, it is difficult to substantiate the contracting officer's fair and reasonable price determinations, especially when the IGCE and the vendors' proposed cost differ significantly.

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<sup>13</sup> IGCEs are the Government's estimate of the resources and projected cost of the resources a contractor will incur in the performance of a contract and are intended to provide adequate justification that the contractor's proposed cost is competitive and reasonable.

<sup>14</sup> FAR 7.104(a)(b)(c).

<sup>15</sup> FAR 7.105(b)(2)(3)(4).

<sup>16</sup> The 8(a) Business Development Program was created to assist small, disadvantaged businesses compete in the American economy through business development. According to FAR 19.805-1(c), a proposed 8(a) requirement with an estimated value exceeding the applicable competitive threshold amount shall not be divided into several requirements for lesser amounts in order to use 8(a) sole source procedures for award to a single firm. FAR 19.805-1(a)(2) establishes the competitive threshold for manufactured products as \$6.5 million and \$4 million for all other acquisitions.

<sup>17</sup> SBA's *Acquisition Standard*, Chapter 6 titled "Acquisition Planning," provides guidance to SBA program personnel on preparing acquisition plans and specifically requires that IGCEs are prepared for acquisitions over the simplified acquisition threshold. As of FY 2014, the simplified acquisition threshold means \$150,000 (FAR 2.101).

We reviewed other Federal agencies' procedures for preparing IGCEs to identify best practices that SBA may consider using. For example, the Army Contracting Command states IGCE documentation should include a narrative supporting how costs or prices were developed with sufficient analytical support that explains the purpose, scope, IGCE preparer conclusions, and clearly identifies reference material used.<sup>18</sup> Additionally, the Army Contracting Command states that the documentation should allow the contracting office to understand what analytical procedures the IGCE preparer used and how supporting documents and information were used.

In addition, the U.S. Agency for International Development calls for "sufficient information (rationale and assumptions) in the IGCE to allow for the explanation of differences between the IGCE and an offered price..." and that "significant discrepancies between the IGCE and the offeror's proposal should be documented."<sup>19</sup> Further, the Defense Acquisition University (DAU) calls for the agency to analyze any significant variation between an offeror's proposal and the IGCE. DAU says that when variations exist, the Government can identify and correct inaccuracies in the IGCE or use the IGCE to negotiate a more realistic price.<sup>20</sup> If SBA does not strengthen its guidance, particularly to address the program office's lack of supporting documentation when preparing IGCEs during acquisition planning, SBA contracting officers may not be able to rely on these IGCEs to negotiate reasonable prices on future contracts.

### **Inadequate Best Value Determination**

The FAR requires contracting officers to ensure all quotes received are fairly considered in accordance with the evaluation criteria in the request for a quote and to place the order with the contractor that represents the best value.<sup>21, 22</sup> However, we found that SBA does not have sufficient Agency guidance for evaluating vendors' quotes and inconsistently evaluated vendor quotes while performing a best value determination for one contract. In this instance, the contracting officer relied on a team of technical experts comprised of three program office personnel, and requested a fair and impartial review of the vendors' quotes consistent with the solicitations evaluation criteria. The technical evaluation team (TET) considered technical strengths in one vendor's quote, but did not give other vendors credit for possessing identical strengths in their technical approach. Additionally, one of the three technical evaluators was the acting CFO. According to SBA's *Acquisition Standard*, the CFO is responsible for the Agency's acquisition management and is identified as SBA's Chief Acquisition Officer (CAO). According to the *Acquisition Standard*, the CAO is responsible for monitoring the performance of the acquisition activities.<sup>23</sup> We believe the acting CFO's participation as a voting member on the TET is incompatible with her CAO duty to monitor the acquisition function since it may compromise her ability to perform objective evaluations of SBA's acquisition process.

### **Acquisition Deficiencies**

The following examples include more detailed accounts of the contracting issues we identified:

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<sup>18</sup> Army Contracting Command, Contract File Internal Control Requirements for Independent Government Cost Estimates (IGCE) Desk Book (July 2011).

<sup>19</sup> USAID Independent Government Cost Estimate Guide and Template (April 2013).

<sup>20</sup> *Department of Defense COR Handbook*, Appendix B: Contract Planning and Source Selection (March 2012).

<sup>21</sup> FAR 8.405-2.

<sup>22</sup> Best Value means the expected outcome of an acquisition that, in the Government's estimation, provides the greatest overall benefit in response to the requirement (FAR 2.101).

<sup>23</sup> Standard Operating Procedure 00 11 2, *Acquisition Standard* (Revised Edition, June 2013).



### ***SBAHQ-13-M-0092***

In June 2013, SBA awarded a sole-source contract for database and legacy application platform IT services, valued at approximately \$2.9 million, to an 8(a) incumbent vendor. According to the acquisition plan, over 50 vendors could have met SBA's need for this requirement and several firms were capable of providing the specific integration and support needed. For this reason, the contracting officer could have recommended that SBA's Associate Administrator for 8(a) Business Development approve a competitive 8(a) award below the \$4 million threshold. Although SBA approves these requests on a limited basis, the FAR indicates such approvals will primarily occur where technical competitions are appropriate or where a large number of responsible 8(a) firms are available for competition.<sup>24</sup> Given that multiple vendors could have performed the work, the SBA contracting officer could have held a competitive 8(a) acquisition in an effort to receive further assurances of competitive prices.

### ***SBAHQ-14-C-0014***

In August 2014, SBA awarded an 8(a) sole-source contract (with an obligated value of \$4.8 million) to an incumbent vendor for Oracle hardware and software for its Loan Accounting System (LAS) production environment, when it was not eligible for a sole-source award because it exceeded the \$4 million threshold.<sup>25</sup>

Although SBA initially envisioned awarding a 5-year contract worth about \$7 million (for 1 base year plus four 1-year options), due to "timing issues" SBA decided to remove the four 1-year options in an effort to expedite the contract award. Based on SBA's IGCE, the 12-month base contract would cost SBA about \$3.7 million, making it eligible for 8(a) sole source procedures. According to SBA officials, using these procedures allowed them to obtain the most current IT equipment and technology in a timely manner. However, the FAR prohibits dividing requirements of an 8(a) proposed contract that would have otherwise been over the \$4 million threshold in order to use 8(a) sole-source procedures. While we agree that timeliness is important when procuring IT equipment, the base year contract should have still been awarded competitively. This is particularly the case since the initial \$3.7 million estimate ended up costing \$4.8 million, 20 percent over the competitive threshold amount. While the FAR allows contracts to be awarded as sole-source if the initial estimation is less than the threshold, this is only true if the final value of the contract does not exceed 10 percent of the threshold—in this case, \$4.4 million.<sup>26</sup> Because it relied upon sole-source procedures when it should not have, SBA missed an opportunity to receive more competitive prices and will have to award a follow-on contract to continue these services moving forward.

Finally, we noted that an SBA contracting officer did not obtain a required waiver from SBA's Office of Government Contracting and Business Development to the Non-Manufacture Rule prior to awarding the contract.<sup>27</sup> This waiver would allow an 8(a) firm to supply

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<sup>24</sup> FAR 19.805-1 (d).

<sup>25</sup> The contractor was not in a category able to exceed the \$4 million threshold, such as exceptions for Indian tribes Alaskan Native Corporations, and Native Hawaiian Organizations (13 C.F.R. § 124.506(a) and (b)).

<sup>26</sup> 13 CFR 124.506 (a) (4).

<sup>27</sup> According to CFR, Title 13, Part 121, Subsection 406, *Size Eligibility Requirements for Government Procurement* (13 CFR 121.406), to qualify as a small business concern for an 8(a) contract, an offeror must either be: (1) the manufacturer or producer of the end item being procured; or (2) a nonmanufacturer, which normally sells the type of item being supplied and will supply the end item of a small business manufacturer, or obtain a waiver from the SBA Administrator.

products from a large contractor, provided that the contracting officer performs market research in order to verify that the products cannot be manufactured by a small business. The contracting officer told us that, at the time of the solicitation, she misinterpreted the regulations surrounding the Non-manufacture Rule. However, as part of a prior audit, we recommended that SBA train its contracting personnel on the Non-manufacture Rule.<sup>28</sup> Because SBA is responsible for overseeing compliance with Non-Manufacture Rule waiver regulations Government-wide, the Agency—including its contracting officers—should set the standard for compliance. Without a waiver, SBA may be limiting the benefits that are meant for small businesses.

### ***SBAHQ-13-C-0013***

In August 2013, SBA awarded an 8(a) incumbent vendor a follow-on, sole-source, labor-hour contract to develop, maintain, and support SBA’s loan accounting systems (with an obligated value of \$1.6 million and an estimated total contract value of \$2 million).<sup>29, 30</sup> Since the IGCE did not include two necessary labor categories, the vendor’s proposed prices exceeded the IGCE by \$577,253—a 58 percent difference. The SBA contracting officer appropriately performed additional work to verify the vendor rates for these two labor categories, even though SBA did not have guidance to do so.

According to SBA acquisition officials, the IGCE did not list a “systems administrator” or “after hours support” position, both of which were necessary to the contract. Consequently, the acquisition office did not have a revised estimate that included these additional labor categories, as it should have. The FAR recommends that agencies compare prices to the IGCE to ensure fair and reasonable prices, among other techniques. However, because the two additional positions were not outlined in the IGCE, the contracting officer instead needed to follow up with the vendor prior to awarding the contract to match the labor rates with the only other available pricing: the vendor’s published pricing index. While the contracting officer performed additional work in an effort to ensure fair and reasonable prices for this acquisition, she did not document a price reasonableness determination, even though this step is required in the FAR.<sup>31</sup>

We also found that SBA should not have awarded this contract as a “labor hour” contract using sole-source procedures. According to the FAR, in this situation, labor-hour contracts for commercial services can only be awarded if the contracting officer follows competitive, set-aside procedures.<sup>32</sup> However, by awarding the contract as sole-source, SBA effectively eliminated the competitive component, making it ineligible to be considered “labor-hour.” Instead, SBA should have awarded this contract as a “firm-fixed price” contract, which we believe would place less risk on the Government, especially since the incumbent was

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<sup>28</sup> *SBA’s Procurement Information Technology Hardware and Software through Isika Technologies* (Audit Report 11-08, February 2011).

<sup>29</sup> A labor-hour contract is a variation of the time-and-materials contract, differing only in that materials are not supplied by the contractor. A time-and-materials contract provides for acquiring supplies or services on the basis of direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit (FAR 16.601 (b)(1) and FAR 16.602). With a labor-hour contract, there is no incentive for the contractor to control cost or labor efficiency; as such, it is the Government’s responsibility to monitor the contractor in order to verify that efficient methods and effective cost controls are being used (FAR 16.601 (c)(1)).

<sup>30</sup> This contract included an option to extend the period of performance for 3 months at an additional cost of \$400,000. For this report, we consider total estimated contract values based on the total cost of the contract if all options are exercised.

<sup>31</sup> FAR 15.406-3 (a)(11).

<sup>32</sup> FAR 12.207(b)(1).

providing similar support to another SBA program office under a firm-fixed price contract.<sup>33</sup>

### ***SBAHQ-14-F-0075***

In May 2014, SBA's contracting officer awarded a task order contract (with an obligated value of \$1.7 million and an estimated total contract value of \$8.3 million) to consolidate the support for its Oracle Federal Financial, Administrative Accounting, and Funds Control systems, which previously were supported under separate contracts. The SBA contracting officer solicited requests for quotes from small businesses holding contracts on GSA's Federal Supply Schedule for IT Maintenance and Database Support.<sup>34</sup> Of the 23 quotes received, the TET found 3 vendors' quotes to be technically equivalent. The TET selected the highest priced quote of the three technically equivalent quotes as the best value for the Government—even though this quote was over \$1 million higher—because it felt that the vendor offered specific strengths that justified accepting the higher-priced vendor's quote. However, we found inconsistencies in the TET's review of the vendors' quotes and found that other, lower-priced vendors offered the same specific strengths. This review did not comply with the FAR, which requires the contracting officer to ensure all quotes received are fairly considered and all awards are made in accordance with the evaluation criteria in the request for quote.<sup>35</sup> As a result, SBA potentially expended over \$1 million in unnecessary funds.<sup>36</sup>

Further, the TET determined the highest price vendor's quote offered an advantage because it included key personnel with experience on a large and complex IT project involving similar effort to the requirement in this solicitation. However, the lowest-price vendor also offered key personnel with experience on this same large and complex IT project. Additionally, the lowest priced vendor also included this experience as part of their past performance, whereas the highest price vendor did not. Despite the lowest-priced vendor's offer, including multiple references to the large and complex IT project, the TET did not identify this experience as a strength in its evaluation. Moreover, the TET heavily weighted the highest-priced vendor's experience in meeting one area of the requirement—funds control—even though the TET rated all three vendor's quotes as technically equivalent. The solicitation's evaluation criteria did not specify this emphasis on the funds control portion of the requirement. Because of these inconsistencies, the TET's best value determination was not transparent.

We also found a potential separation of duties issue. According to Federal standards, agencies must design internal controls to ensure that the acquisition function is efficient, effective, and accountable to taxpayers; this should include separating incompatible duties.<sup>37</sup> For this award, the acting CFO, who is also the CAO, was one of three voting

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<sup>33</sup> In a firm-fixed price contract, the price is not subject to any adjustment of the contractor's actual costs in performing the contract, which may differ from the originally proposed price. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss (FAR 16.202-1).

<sup>34</sup> The SBA contracting officer used GSA's Schedule 70 for this solicitation.

<sup>35</sup> FAR 8.405-2

<sup>36</sup> The highest priced vendor initially quoted \$8.6 million for this effort. After the SBA TET made its selection, the SBA contracting officer negotiated a price reduction and awarded the contract for \$8.3 million. The difference between the lowest priced vendor's quote and the awarded contract totaled \$726,259.

<sup>37</sup> OFPP guidance for conducting acquisition assessments under OMB Circular A-123 (May 2008) and GA0/AIMD-0021.3.1 *Standards for Internal Control in the Federal Government* (November 1999).

members on the TET.<sup>38</sup> According to SBA's *Acquisition Standard*, SBA's CFO is responsible for the Agency's acquisition management and is identified as SBA's CAO. As the Agency's CAO, one of her many duties includes monitoring and evaluating Agency acquisition activities.<sup>39</sup> However, by acting as a voting member of the TET, the acting CFO influenced the contracting officer's source selection decision by providing input into the TET's best value decision. In our judgment, the acting CFO's involvement as a voting member on the TET is incompatible with her management duties of monitoring the acquisition function.

In addition, the Agency missed an opportunity to maximize its resources and select the lower-priced vendor whose quote the TET found to be "excellent" in all three-evaluation criteria for this requirement. Even the contracting officer, who was the source selection authority on this requirement, questioned whether the TET had fully supported its assertions that the higher-priced vendor's quote was the best value for this requirement, and requested an SBA legal counsel review. After working with SBA legal counsel for two weeks, the TET moved forward to sign its evaluation consensus and best value documents, and the contracting officer awarded the task order. However, we continue to question the price reasonableness of this award due to inconsistencies in the TET's evaluation.

## Recommendations

We recommend that SBA's Administrator:

1. Establish policy and procedures to ensure the individual responsible for the Chief Acquisition Officer's duties does not participate as a voting member in future technical evaluations.

We recommend that SBA's Chief Financial Officer:

2. Establish and implement clear, written policies and procedures for preparing IGCEs and analyzing contractor-proposed costs to ensure prices are fair and reasonable.
3. Establish policies and procedures requiring contracting officers to document and analyze significant cost discrepancies between contractor-proposed prices and IGCEs, especially when negotiating sole-source contract award actions.
4. Establish and implement clear, written policies and procedures for conducting fair and equitable reviews of competitive offers or proposals for all SBA personnel who perform technical evaluations that support agency acquisition determinations.
5. Provide training to SBA contracting and program personnel on the changes to policies and procedures identified above as part of Recommendations 2, 3, and 4.
6. Provide training to SBA contracting and program personnel on 8(a) Business Development Program contracting limitations and the appropriate use of the Non-Manufacturer Rule.

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<sup>38</sup> At the time of the TET's review of the competing offers for this solicitation, the individual was performing her CFO duties in an "acting" capacity and was later officially designated as SBA's CFO on February 22, 2015.

<sup>39</sup> Standard Operating Procedure 00 11 2, *Acquisition Standard* (Revised Edition, June 2013).

## **Finding 2: SBA Needs to Ensure Using IBC is the Best Procurement Approach**

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SBA did not establish effective controls to manage the Agency’s use of assisted acquisitions made by DOI’s IBC, the servicing agency, on behalf of SBA, the requesting agency, when procuring IT products and services. Specifically:

- SBA program officials did not ensure using IBC was the most cost-efficient or best procurement approach for the six assisted acquisitions we reviewed;
- SBA and IBC did not update the umbrella interagency agreement with changes made to the service fee structure; and
- SBA program officials incorrectly identified severable services requirements as nonseverable—which could lead to potential Bona Fide Need Rule and Antideficiency Act violations—and sent interagency transaction requests to IBC without SBA contracting officers’ involvement.<sup>40</sup>

This occurred because SBA does not have a unified policy for program offices to use IBC, has not yet fully implemented Federal guidance for interagency agreements, and does not have a formalized review process to establish responsibilities and accountability among the reviewing officials. If SBA does not fully implement Federal guidance on interagency agreements, it likely will never realize the intended savings or efficiencies of using a streamlined acquisitions process for procuring commonly used goods and services.

Achieving the greatest value possible from interagency acquisitions requires agencies to establish clear lines of responsibilities and expectations. Accordingly, the FAR and Office of Federal Procurement Policy (OFPP) guidance on interagency acquisitions explain core requirements for the procurement process, emphasizing that requesting and servicing agencies share responsibility for effectively managing and using interagency acquisitions. Most importantly, before requesting acquisition services from another agency, a requesting agency must determine the best procurement approach.<sup>41</sup> Prior to requesting contracting services, the servicing and requesting agency need to establish an umbrella interagency agreement (“Part A” of an assisted acquisition), which will clearly define roles and responsibilities. For each proposed procurement, the requesting agency must provide the servicing agency with a funding document (“Part B” of an assisted acquisition), which establishes the bona fide need in specific, definite, and clear terms; and certifies that funds are available and appropriately meet the purpose and any time limitations.<sup>42</sup>

### **SBA Program Officials May Be Utilizing IBC Unnecessarily**

SBA program officials for the six assisted acquisitions we reviewed did not comply with FAR requirements when determining whether requesting IBC’s acquisition assistance would be the best procurement approach. According to the FAR, the determination must include an evaluation by the requesting agency that using the acquisition services of another agency (1) satisfies the requesting agency’s schedule, performance, and delivery schedule; (2) is cost-effective; and (3) results in the

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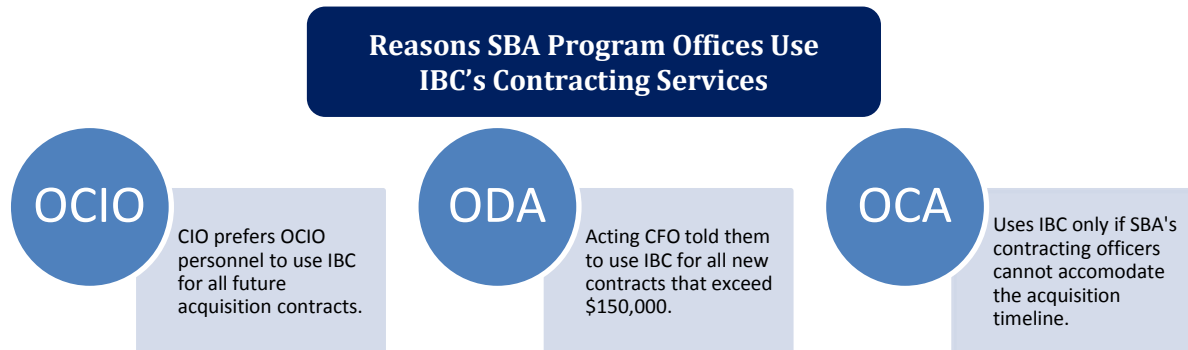
<sup>40</sup> The Antideficiency Act prohibits Federal agencies from obligating or expending Federal funds in advance or in excess of an appropriation.

<sup>41</sup> OFPP guidance describes this determination as a “best interest determination.” (*Office of Federal Procurement Policy Guidance on Interagency Acquisitions* [June 2008]).

<sup>42</sup> FAR 17.502-1(b) and the *Office of Federal Procurement Policy Guidance on Interagency Acquisitions* (June 2008).

use of funds in accordance with appropriation limitations.<sup>43</sup> We found SBA program offices did not sufficiently analyze the advantages and disadvantages of using IBC to procure SBA IT products and services contracts, and provided inconsistent rationale and support for choosing to use IBC. For example, instead of a proper determination of best procurement approaches, SBA personnel from OCIO, the Office of Disaster Assistance (ODA), and the Office of Capital Access (OCA), cited various and differing justifications for why they used IBC instead of SBA's contracting officers (see Figure 1). While these reasons may hold some validity, none of them meet the FAR's minimum requirements for the best procurement approach determination since none of their determinations included steps for evaluating whether going outside the Agency was cost-effective.

**Figure 1. SBA Program Office's Justifications for Using IBC's Contracting Services**



Source: Generated by OIG based on interviews with SBA program personnel.

Additionally, although SBA requesting offices underwent a formalized request process prior to employing IBC's services, these steps did not provide sufficient detail to ensure going outside the Agency was the best procurement approach. During the course of our audit, SBA had contracted with a consulting firm to perform an independent assessment on its acquisition function.<sup>44</sup> In March 2015, the consulting firm reported that SBA had an established assisted acquisition process, whereby the senior procurement executive is provided an opportunity to review interagency contracting actions prior to funding being transferred to the receiving agency. Also, the assessment identified that SBA uses an interagency acquisition request form to coordinate approval of the proposed interagency contracting action. While the consultant reported that this form validates SBA's understanding of the market and other options to satisfy the need, we found that these interagency acquisition request forms did not contain sufficient information for the senior procurement executive to make an informed decision on whether an interagency agreement would be the best or most cost-effective procurement approach. Specifically, these interagency acquisition request forms did not contain sufficient details of the work to be performed, a justification for using an outside agency, or the monetary impact of doing so.

As a result, SBA cannot be certain that utilizing IBC was the best course of action. In fact, we found that IBC awarded five of the six contracts as task orders against General Services Administration Government-wide acquisition contracts or Federal supply schedule contracts, meaning that SBA's contracting officers have the same access to the pool of contractors as IBC contracting officers. Overall, SBA contracting officers use the same Government-wide contracting vehicles as IBC to procure nearly 50 percent of SBA's program offices contract requirements. As a result, SBA may be requesting services from IBC—while incurring unnecessary service fees—for contracts that SBA contracting officers could award. As of FY 2014, SBA spent over \$600,000 on IBC contract services

<sup>43</sup> FAR 17.502-1 (a)(1).

<sup>44</sup> *Assessment of Agency Acquisition Operations: Final Evaluation of Findings* (March 2015).

fees on the six assisted acquisitions we reviewed, and could incur an additional \$1.3 million if the six contracts are fully exercised. Further, OFPP guidance states including the Agency’s contracting officers as part of the best procurement approach determination of a proposed interagency assisted acquisition facilitates good acquisition outcomes.<sup>45</sup> For these six assisted acquisition requests, SBA contracting officers were not a part of the best procurement approach determination. Had SBA used its own contracting officers to award these contracts, the funds spent on service fees could have been available for other important Agency priorities.<sup>46</sup>

### **SBA and IBC Part A of the Interagency Agreement May Result in Excess Service Fees**

We also found that SBA and IBC did not update the billing and payment general terms and conditions of Part A of the interagency agreement.<sup>47</sup> According to SBA’s acting CFO, SBA and IBC reduced the service fee from 5 to 4 percent on May 7, 2014—2 years after Part A was developed and signed. However, neither agency formally documented this reduction. While their interagency agreement specifies that any changes made to the terms and conditions must be amended in writing and signed by both the servicing agency and the requesting agency, the CFO told us she will not be requesting any changes to the Part A document. Part A governs the relationship between SBA and IBC and ensures that program, acquisition, financial, legal, and other interested personnel understand how they are to manage assisted acquisitions.<sup>48</sup> If Part A does not accurately reflect the actual agreement, SBA risks paying more for IBC’s services since neither party has formally acknowledged this fee reduction in the umbrella terms and conditions for the interagency agreements. We found this to be the case for one of the assisted acquisitions we reviewed. IBC awarded a contract on behalf of ODA nearly 7 weeks after SBA and IBC agreed to the fee reduction, and collected a service fee using the 5 percent rate.

### **SBA’s Informal Review Process of Part B Documents Did Not Identify Potential Funding Misuse**

SBA personnel incorrectly identified the requested services as nonseverable services on the Part B document for four of the six assisted acquisitions totaling \$6.9 million.<sup>49</sup> Continuing or recurring services are considered severable if their performance can be interrupted by separate fiscal years and still provide value. Severable services may not cross fiscal year lines unless authorized by statute.<sup>50</sup> Conversely, a service which requires the contractor to complete and deliver a specified end product that cannot feasibly be subdivided for separate performance would be nonseverable, and must be funded in its entirety using funds available at the time of the award.<sup>51</sup>

Whether a service is severable or nonseverable becomes a crucial factor in determining how to fund the contract. The Bona Fide Needs Rule provides that “an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during

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<sup>45</sup> *OFPP Guidelines for Assessing the Acquisition Function* (May 2008).

<sup>46</sup> See Appendix II, table 3b for OIG identification of the total amount of funds that may be available to the Agency for better use.

<sup>47</sup> This document was signed on May 8, 2012.

<sup>48</sup> *Office of Federal Procurement Policy Guidance on Interagency Acquisitions* (June 2008).

<sup>49</sup> The Part B document supports the bona fide need determination and funding document for the request to identify the service as either severable or nonseverable.

<sup>50</sup> GAO-04-261SP, *Appropriation Law*, Vol 1, Chapter 5, pp. 5, 24-25 (January 2004). Similarly, according to 41 U.S.C. 3902, Federal agencies can enter into severable service contracts that cross fiscal years as long as the contract period does not exceed 1 year.

<sup>51</sup> *Financial Crimes Enforcement Network – Obligations under a Cost Reimbursement, Nonseverable Services Contract* (GAO Report B-317139, June 2009).

the period of availability or to complete contracts properly made within that period of availability.”<sup>52</sup> Contracts for services are generally viewed as chargeable to the appropriation current at the time the services are rendered. For SBA contract requirements that are fully funded with no-year funds, the bona fide needs rule does not apply, since there is no prescribed period of availability and thus no fixed period in which the funds must be obligated and expended.<sup>53</sup> Because SBA requesting offices inaccurately identified the IT services as nonseverable for these four assisted acquisitions, the Agency may violate the Bona Fide Needs Rule if the funds were used beyond the period of availability. We did not find evidence of a Bona Fide Needs Rule violation in the four incorrectly identified assisted acquisitions we reviewed; however, continuing this practice could result in violations if the period of performance extends beyond 12 months.<sup>54</sup>

According to the FAR, contracting officers are ultimately responsible for correctly identifying a contractual requirement’s severability.<sup>55</sup> However, when using the contracting services of another agency, OFPP guidance requires that the requesting agency determine the bona fide need in the fiscal year of the contract. Additionally, the certifying official at that agency must determine the funds are properly chargeable for the contract as defined in the Part B funding document.<sup>56</sup> Further, according to other OFPP guidance, Agency contracting officers should be included in the review process of the proposed interagency acquisition requests to ensure proper procurement guidelines are followed prior to sending the request to another agency, to facilitate good acquisition outcomes.<sup>57</sup> Since SBA retains the responsibility to determine the bona fide need of the requirement despite using another agency’s contracting officer, SBA could have prevented the incorrectly identified service contracts by including SBA contracting officers in the Part B document review.

## Recommendations

We recommend that the Chief Financial Officer:

7. Update the interagency agreement to ensure the service fee adjustment negotiated in 2014 is incorporated into the general terms and conditions of SBA’s interagency agreement with IBC and request concurrence from IBC contracting services branch chief.
8. Develop policies and procedures for interagency acquisitions so that SBA is in compliance with Federal requirements to achieve the greatest value possible from interagency acquisitions.

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<sup>52</sup> 31 U.S.C. §1502(a)

<sup>53</sup> A no-year appropriation is available for obligation without fiscal year limitation (GAO-04-261SP Appropriation Law – Vol 1, Chapter 5, page 5-7 [January 2004]).

<sup>54</sup> The periods of performance for the contracts we reviewed extended beyond the completion of our audit fieldwork; therefore, we did not determine whether a Bona Fide Needs Rule violation occurred.

<sup>55</sup> FAR 1.602-2(a) requires contracting officers: “ensure that the requirement of 1.602-1(b) have been met and that sufficient funds are available for obligation.” Further, FAR 1.602-1(b) requires: “No contract shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met.” As we have explained, the proper identification of the nature of the required services as severable or nonseverable is critical for ensuring the agency complies with Federal funding regulations, specifically the bona fide need rule which is codified in 31 U.S.C. §1502(a).

<sup>56</sup> *Office of Federal Procurement Policy Guidance on Interagency Acquisitions* (June 2008).

<sup>57</sup> *OFPP Guidelines for Assessing the Acquisition Function* (May 2008)



9. Prior to exercising any further options on the IBC-awarded contracts, make a determination on whether using IBC's contracting services is the best procurement approach, especially for requirements awarded as task orders against General Services Administration Government-wide acquisition contracts or Federal supply schedule contracts.
  
10. Develop a formalized review process for Part B funding documents to ensure Agency funds are used in accordance with Federal regulations. The formalized review process should be documented to include: identifying SBA department personnel roles and responsibilities for reviewing the funding documents and an approval mechanism for accountability and transparency.

## Finding 3: SBA’s Contract Funding Practices are Inconsistent and Undocumented

We reviewed 12 contracts and found that SBA funded 8—with total obligated values of \$24.1 million—using multiple appropriations, including disaster funds.<sup>58</sup> For these contracts, SBA’s funding methodologies were inconsistent and undocumented. This occurred because SBA did not have formal guidance in place outlining how to allocate different funds for contracts that use multiple appropriations. Absent guidance on use of funds, the disaster appropriation is at risk of becoming a source of funding for other Agency prerogatives.

We found that when using mixed funding, SBA did so inconsistently and without documentation (see Table 2). During FYs 2013 and 2014, SBA program and management offices funded eight contracts using a combination of the following appropriations:<sup>59</sup>

- **Salaries and Expenses:** for SBA’s overall operating expenses. Available for 1 year.
- **LMAS (categorized under Salaries and Expenses):** for modernizing the Loan Management and Accounting Systems (LMAS). Available for 2 years.<sup>60</sup>
- **Disaster Loans Program Account:** for the administrative costs of the Disaster Loans Program. Available until expended.

**Table 2. Various SBA Appropriations Used to Fund Sampled Contracts**

Contract Number	Requirement	Total Obligated (\$ in thousands)	S&E <sup>a</sup> Funds (%)	LMAS Funds (%)	Disaster Funds (%)
Contracts Funded with Salaries and Expenses, LMAS, and Disaster Funds					
SBAHQ-13-C-0013	LAS <sup>b</sup> Support	\$1,576	63	18	18
SBAHQ-14-C-0014	LAS <sup>b</sup> Hardware & Software	\$4,778	12	44	44
SBAHQ-14-F-0075	Financial Systems Support	\$1,657	53	7	40
SBAHQ-14-F-0120	LAS <sup>b</sup> IT Support	\$5,371	60	24	16
	<b>Total</b>	<b>\$13,382</b>	<b>42</b>	<b>29</b>	<b>29</b>
Contracts Funded with LMAS and Disaster Funds					
SBAHQ-14-F-0071	LMAS Oracle Software Renewal	\$872	-	50	50
IND13-PD-01505	COBOL TPPI <sup>c</sup>	\$3,366	-	50	50
	<b>Total</b>	<b>\$4,238</b>	<b>-</b>	<b>50</b>	<b>50</b>
Contracts Funded with Salaries and Expenses and Disaster Funds					
SBAHQ-13-M-0092	Database & Legacy Application IT Services	\$2,944	54	-	46
IND14-PD-00960	Website Support	\$3,557	24	-	76
	<b>Total</b>	<b>\$6,501</b>	<b>38</b>	<b>-</b>	<b>62</b>
	<b>Total Funding Obligated</b>	<b>\$24,121</b>	<b>33</b>	<b>25</b>	<b>42</b>

a Salaries and Expenses (S&E)

b Loan Accounting System (LAS)

c Common Business Oriented Language (COBOL) Transition Planning and Production Implementation (TPPI)

Source: OIG, from SBA’s contract file data. Total obligations per contract and funding type percentage subtotal discrepancies are a result of rounding.

<sup>58</sup> The eight contracts have estimated values which total \$64.3 million

<sup>59</sup> Congress authorized SBA appropriations under six categories for specific purposes.

<sup>60</sup> Congress earmarked \$7.1 million in FY 2013 and \$6.1 million in FY 2014 in Salaries in Expenses.

## Inconsistent and Undocumented Methodologies

SBA personnel had inconsistent and undocumented methods for funding contracts with mixed appropriations types. For example, the OCA personnel we spoke with claimed LMAS modernization contracts are funded using 50 percent disaster funds and 50 percent LMAS funds. However, although SBA's Deputy CFO confirmed that this guidance should be in effect for the LMAS modernization project, he has been unable to find any written guidance specifying the 50/50 mixture because the principal parties that decided on the 50/50 mixture—including the CFO, Budget Officer, and LMAS Project Manager—are no longer with SBA. Even with this informal guidance in place, we found that SBA did not consistently follow it: three of the four OCA contracts we reviewed contained funding mixes that included salaries and expenses funds, LMAS funds, and disaster funds—with disaster funding ranging from 16 to 50 percent of the contract requirement.

Additionally, OCIO personnel claimed that contracts that support efforts Agency-wide are funded using 51 percent disaster funds and 49 percent 1-year funds. While the Deputy CFO agreed with the OCIO's funding ratio claim of 51/49 for Agency-wide support contracts, he could not provide a documented policy to support the basis of this guidance and stated that the individuals who set the policy are no longer with the Agency. However, for two OCIO contracts we reviewed, we observed obligated funding mixes did not follow this guideline: contract IND14-PD-00960 for website support used mostly disaster funds (76 percent) whereas contract SBAHQ-13-M-0092 for database and legacy applications IT services used 54 percent disaster funds.

When we asked the Deputy CFO why the program offices did not follow the informal guidance for the eight LMAS and Agency-wide support contracts, he provided individual justifications based on contract requirements.<sup>61</sup> However, when we looked at the contract requirements, we could not determine whether this was the case because the requirements lacked sufficient details.

Further, SBA did not provide proper justification when mixing funds. Providing documentation and justification in the contract file can serve as an important control to ensure that funds allocated by Congress are being used for their intended purposes.<sup>62</sup> Because SBA program office personnel did not provide supportable justifications, we are unable to determine whether SBA appropriately and reasonably used its funding. For example, contract SBAHQ-14-C-0014, which obligated \$4.8 million for hardware and software for the LAS production environment, used the following funding mix: 44 percent with LMAS funds, 44 percent with disaster funds, and 12 percent with salaries and expenses funds. However, although SBA provided support for modernizing SBA's loan accounting environment in the acquisitions plan, it did not include any support in the contract for why funds other than LMAS were used for the contract.

Additionally, SBA funded contract IND14-PD-00960 for website support services totaling \$3.6 million using two appropriation categories: 76 percent of the contract was funded using disaster funds, and the remaining 24 percent was funded using salaries and expenses funds. However, the contract file documentation did not specifically identify disaster loans program as the main recipient of the services, and we were unable to determine why disaster funds should be used for website support services. Therefore, SBA should develop a methodology to clearly and consistently identify funding ratios for transparency and accountability.

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<sup>61</sup> We included a complete summary of the Deputy CFO's funding explanations for the eight split-funded contracts in Appendix III.

<sup>62</sup> According to FAR 4.802 and 4.803(a) contracting office files should contain records that document the basis for acquisition and award, such as acquisition planning information and justifications, along with other pertinent records.

## SBA's Application of Disaster Funds to the LMAS Project Referred to GAO

SBA used a combination of disaster funds and LMAS funds for six of the contracts we reviewed. These contract requirements supported SBA's LMAS modernization efforts, for which Congress specifically earmarked a portion of salaries and expense funds. The appropriation laws that authorized FYs 2013 and 2014 funds included administrative provisions that may have restricted the Agency's ability to fund the LMAS effort. Specifically, Congress included provisions for SBA to transfer and merge portions of the disaster funds as long as they did not exceed 5 percent of the current appropriations made available by the appropriation laws. Further, no transfer could increase any of the appropriations accounts by more than 10 percent.<sup>63</sup> We believe that SBA's use of disaster funding for the LMAS project exceeded these percentages. As such, we requested an opinion from the Government Accountability Office (GAO) on whether SBA exceeded any funding limitations imposed by Congress when combining the different funds in this manner. On December 10, 2015, GAO issued a decision opining that the appropriations at issue were available for use as applied by SBA.<sup>64</sup>

### Recommendations

We recommend that the Chief Financial Officer:

11. Establish and implement clear, written policies and procedures for obligating funds for SBA contracts.
12. Require SBA program and management office acquisition personnel to include justification for using SBA funds for each acquisition request in the Acquisition Plan. Ensure that policy is established to require SBA acquisition community to clearly identify the nature of the contract and justify the use of the selected funds are consistent with the funds purpose.
13. If GAO opines SBA's use of disaster funds for LMAS modernization efforts improperly augmented the allowable amount Congress intended, SBA needs to: (1) identify the total amount of disaster funds used for LMAS modernization efforts; (2) deobligate the disaster funds that exceed the allowable transfer authority for augmenting LMAS funds; and (3) obligate LMAS funds that meet the Bona Fide Needs Rule for the contract. Determine whether sufficient LMAS funds are available, and if sufficient funds are not available SBA should report an Antideficiency Act violation in accordance with procedures prescribed in OMB Circular A-11, §145.

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<sup>63</sup> During FY 2013, SBA operated under continuing resolutions, which according to Continuing Appropriation Resolution, 2013, P.L. 112-175, Section 101, authorized SBA to operate under FY 2012 appropriation amounts with the exception of the additional funding provided for the Disaster Relief Appropriation Act of 2013, P.L. 113-2. Accordingly, we referred to Consolidated Appropriations Act, 2012, P.L. 112-74 for SBA appropriations authorizations. We referred to Consolidated Appropriations Act of 2014, P.L. 113-76, for SBA's authorized FY 2014 appropriations. Section 530 of FYs 2012 and 2014 Appropriations acts may provide restrictions on the allowable amount of disaster funds available for LMAS projects.

<sup>64</sup> GAO Decision, "Small Business Administration: Availability of Appropriations for Loan Modernization and Accounting System." (B-326941, December, 2015).

## Analysis of Agency Response

SBA management provided formal comments that are included in their entirety in Appendix IV. Generally, SBA management agreed with our recommendations, and its planned actions resolve 9 of our 13 recommendations. SBA management also provided general comments on the audit findings that we considered in preparing our final report.

Although SBA management stated that the audit did not identify any disallowed expenditures, our audit objectives did not include a determination on whether the contractor's costs were allowable. As a result, for the 12 contracts we reviewed, with estimated total contract values of \$98.4 million, we did not express an opinion on the allowability of the contractors proposed or incurred costs.

SBA management expressed concern with our finding that a \$2.9 million sole-source contract (contract SBAHQ-13-M-0092) was awarded to an ineligible 8(a) vendor. Our draft report noted that the 8(a) vendor was ineligible for a sole-source award because it missed its business activity targets. SBA management stated that the 8(a) participant was eligible for sole-source contracts because the sole-source award offer was accepted on May 6, 2013, 3 days prior to the vendor's program year ending. We considered SBA's comments and agree that the 8(a) business opportunity specialist accepted the SBA contracting officer's offer before the 8(a) vendor's program year end.<sup>65</sup> As such, the SBA 8(a) business opportunity specialist had not yet found the vendor to be ineligible for 8(a) sole source contracts. The vendor was notified of their ineligibility in July 2013, which was after the contract award date. Therefore, we removed the statement from Finding 1.

Further, for the same contract, management expressed its concern with the general tone of our conclusion that SBA could have requested a competitive 8(a) acquisition in order to ensure it receives competitive prices. Specifically, management stated that the contracting officer had access to the information necessary to make a fair and reasonable price determination because he awarded the contract requirement to the incumbent vendor. We are not concluding that all awards in the 8(a) Program under \$4 million should be awarded competitively. As noted in this report, SBA's market research identified more than 50 vendors capable of performing this requirement. The FAR allows agencies to request a waiver to pursue a competitive 8(a) acquisition strategy "where technical competitions are appropriate or where a large number of responsible 8(a) firms are available for competition."<sup>66</sup> Competitive acquisition can serve as an additional assurance of price reasonableness. While management's assertion that the contracting officer had access to the information necessary to make a fair and reasonable price determination may be valid, we were unable to find supporting documentation in the contract file to verify this claim.

SBA management considered our position on the potential separation of duties issue addressed in Finding 1 to be unsubstantiated and claim that the acting CFO did not assert undue influence on the award decision. Our draft report noted that the acting CFO was one of three voting members on the technical evaluation team that provided input into the TET's best value decision. While we understand that the acting CFO was integral in planning for the acquisition under her former duties as the Director of Financial Systems, the separation of duties concern arose when she was

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<sup>65</sup> As required by 13 CFR § 124.502(b)(3), in order for a contracting officer to award a sole-source contract to a particular vendor under the 8(a) Business Development Program, the contracting officer must submit an offering letter to the SBA district office servicing the vendor. The SBA 8(a) business opportunity specialist at the district office accepts the offer of a sole source 8(a) procurement on behalf of the 8(a) business development program and in support of a specific participant in accordance with 13 CFR § 124.503(a)(1)).

<sup>66</sup> FAR 19.805-1(d).

designated as the acting CFO, which according to SBA's *Acquisition Standard* also carries oversight responsibilities of the acquisition function. In our opinion, the acting CFO's involvement as a voting member on the TET was incompatible with her management duties of monitoring the acquisition function because it may give the appearance of compromising her ability to perform objective evaluations of SBA's acquisition process.

Additionally, for contract SBAHQ-14-F-0075, SBA's management stated that a qualified TET determined that the relative differences in strengths and weaknesses between proposals were sufficient to justify the more than \$700,000 higher price and were advised by the contracting officer as to how to document the difference and trade-offs identified. SBA management also commented that the report suggests that discussions between the contracting officer and Office of General Counsel were evidence that the best value determination was improper. We do not question the Counsel's involvement with reviewing major acquisition documentation. However, we noted that the contracting officer had concerns that the TET did not sufficiently document the risks or benefits for selecting the highest priced vendor and believed that the initial best value determination documentation would not withstand a protest from one of the lower-priced vendors. Based on the documentation we reviewed, it was not clear that the TET had equitably considered the values of these offers.

SBA's management also expressed concerns regarding our discussion that fees SBA paid to IBC for its contracting services may be unnecessary. Specifically, SBA asserted: (1) IBC has familiarity and expertise with IT contract and with particular contractors that SBA may lack in specific situations, (2) IBC may be able to obtain discounts and economies of scale that SBA would not, and (3) using IBC services permits SBA to best deploy its acquisition workforce to assist with the agency's most critical procurements and to have capacity to meet intense acquisition needs such as end-of-the-year purchasing.

While the audit team was aware of these justifications for using IBC's contracting services during our review, we were unable to verify these perceived benefits. As stated in Finding 2 of the audit report, SBA did not follow Federal regulations to ensure using IBC was the best procurement approach before requesting IBC's services. Without the proper documentation to support the SBA program officials' determination that IBC was the best procurement approach for the individual contract requirement, we cannot substantiate SBA's rationale for paying service fees for contracting services when SBA has an acquisition division staffed with contracting officers who could award contracts off the same Government-wide acquisition contracts and Federal supply schedules used by IBC.

Further, SBA management refers to an internal analysis it performed where it determined IBC's service fees were reasonable. We were unaware of this analysis until the exit conference, and even then, it was characterized as an informal analysis. Nevertheless, we reviewed the analysis and noted it did not identify any Agency costs that would still be required when using IBC's contracting services. For example, when using the acquisition services of another agency, not only will SBA be paying the agreed-upon service fees, the Agency will also be using internal resources such as legal reviews of the Part B documents, budget officials, financial systems to track contract funds, and management officials overseeing these processes. In addition, SBA's management should also consider the impact on the Agency's overall use of budgetary resources for acquisitions services when using interagency acquisitions. SBA's acquisition division is a mostly fixed cost to the Agency, while IBC's service fees are dependent on the obligated value of the awarded contract. Every contract awarded by IBC that is not awarded by SBA's contracting officers is an additional expense to the Agency. While there may be justifiable reasons for SBA to use other Agency's contracting officers, as we reported in Finding 2, it is imperative that SBA perform and document adequate best

procurement approach determinations for all requirements sent to IBC in order to fully justify the added cost of these services to the Agency.

### **Summary of Actions Necessary to Close the Report**

The following provides the status of each recommendation, and the necessary action to either resolve or close the recommendation.

1. **Establish policy and procedures to ensure the individual responsible for the Chief Acquisition Officer's duties does not participate as a voting member in future technical evaluations.**

**Unresolved.** SBA management did not agree with this recommendation and stated that the participation of the acting CFO on the technical evaluation team was a unique situation and that sufficient mitigating controls were in place to prevent any separation of duty issues. SBA also stated that it is not required to appoint a CAO under any regulation and that the new acquisition SOP will not identify a CAO.

While we understand that SBA is not required to appoint a CAO under any regulation and that the new SOP will not identify a CAO, the new SOP should still explain who will be responsible for managing the agency's acquisition activities. As a result, we recommended that SBA establish policy and procedures to ensure that the official responsible for fulfilling this role does not participate as a voting member on future technical evaluations. This recommendation can be resolved upon SBA agreeing to implement policies and procedures that prevent the official responsible for managing SBA's acquisition activities from participating as a voting member on future technical evaluation teams.

2. **Establish and implement clear, written policies and procedures for preparing IGCEs and analyzing contractor-proposed costs to ensure prices are fair and reasonable.**

**Resolved.** SBA management concurred with this recommendation and stated that it would add policies and procedures addressing the documentation of IGCEs to the new acquisition SOP. SBA plans to complete final action on this recommendation by January 2017. This recommendation can be closed upon SBA providing evidence showing that the new SOP includes language on preparing IGCEs and analyzing contractor-proposed costs to ensure prices are fair and reasonable.

3. **Establish policies and procedures requiring contracting officers to document and analyze significant cost discrepancies between contractor-proposed prices and IGCEs, especially when negotiating sole-source contract award actions.**

**Resolved.** SBA management concurred with this recommendation and stated that it will add policies and procedures addressing the documentation of analysis of cost discrepancies to the new acquisition SOP. SBA plans to complete final action on this recommendation by January 2017. This recommendation can be closed upon SBA providing evidence showing that the new SOP includes language on requiring contracting officers to document and analyze significant cost discrepancies between contractor-proposed prices and IGCEs, especially when negotiating sole-source contract award actions.

**4. Establish and implement clear, written policies and procedures for conducting fair and equitable reviews of competitive offers or proposals for all SBA personnel who perform technical evaluations that support agency acquisition determinations.**

**Unresolved.** SBA partially concurred with this recommendation and stated that in order to ensure consistency in approach, procedures for documentation of the contracting officer's determination will be added to the new acquisition SOP. These procedures will include obtaining an opinion of legal sufficiency regarding the contracting officer's potential determination. SBA also stated that because the best value determination process is tailored to each action based on the needs of the Agency and the program office, that standard evaluation factors and criteria or prescribed approaches to evaluation will not be included in these procedures. SBA further stated that contracting officers will continue to provide guidance and instructions to technical evaluation teams for each competitive review. SBA plans to complete final action on this recommendation by January 2017.

Although management agreed to include additional steps in the new SOP, it did not agree to include steps on how to conduct fair and equitable reviews of competitive offers or proposals. While we understand that each acquisition is different, we are recommending that SBA would benefit from having the revised SOP include provisions on how to conduct a fair and equitable review to include defining the roles and responsibilities for each SBA official involved in the technical evaluation. Thus, we recommend that the new SOP include these duties to ensure fair and equitable reviews of competitive offers or proposals. This recommendation can be resolved by SBA agreeing to include in the new acquisition SOP language on how to conduct a fair and equitable review, including defining the roles and responsibilities for each SBA official involved in the technical evaluation process.

**5. Provide training to SBA contracting and program personnel on the changes to policies and procedures identified above as part of Recommendations 2, 3, and 4.**

**Resolved.** This recommendation is resolved because SBA management agreed to communicate the policy changes to program personnel and to provide training to acquisition division staff and contracting officer representatives. SBA plans to complete final action on this recommendation by September 2017. This recommendation can be closed upon SBA providing evidence showing that it has communicated the policy changes to program personnel and trained acquisition division staff and contracting officer representatives on the changes to the policies and procedures identified as part of Recommendations 2, 3, and 4.

**6. Provide training to SBA contracting and program personnel on 8(a) Business Development Program contracting limitations and the appropriate use of the Non-Manufacturer Rule.**

**Resolved.** This recommendation is resolved because SBA management agreed to provide training to acquisition division staff and contracting officer representatives on 8(a) Program contracting limitations and on the Non-Manufacturer Rule. SBA plans to complete final action on this recommendation by September 2017. This recommendation can be closed upon SBA providing evidence showing that it has trained its acquisition division staff and contracting officer representatives on 8(a) Program contracting limitations and on the Non-Manufacturer Rule.



- 7. Update the interagency agreement to ensure the service fee adjustment negotiated in 2014 is incorporated into the general terms and conditions of SBA's interagency agreement with IBC and request concurrence from IBC contracting services branch chief.**

**Resolved.** SBA concurred with the recommendation and stated it plans to complete final action on this recommendation by January 2016. This recommendation can be closed upon SBA providing evidence showing that the interagency agreement has been updated.

- 8. Develop policies and procedures for interagency acquisitions so that SBA is in compliance with Federal requirements to achieve the greatest value possible from interagency acquisitions.**

**Resolved.** This recommendation is resolved because SBA management agreed to improve the process and documentation by standardizing the review process for assisted acquisition interagency agreements so that the documentation is proper. The Agency plans to complete final action on this recommendation by September 2017.

This recommendation can be closed after SBA provides written policies and procedures that require documenting a best procurement approach determination for each assisted acquisition, and standardize the entire interagency acquisition process in accordance with FAR requirements and OFPP guidance.

- 9. Prior to exercising any further options on the IBC-awarded contracts, make a determination on whether using IBC's contracting services is the best procurement approach, especially for requirements awarded as task orders against General Services Administration Government-wide acquisition contracts or Federal supply schedule contracts.**

**Unresolved.** SBA management did not agree with this recommendation and stated it has documented a determination for each acquisition submitted to IBC that it is the best procurement approach and that exercising option years on existing contracts reduces the costs of reissuing new awards. As stated in Finding 2, we did not see evidence of adequate best procurement approach determinations for all six assisted acquisitions we reviewed. Therefore, any available option the Agency requests IBC to exercise for these six assisted acquisitions the Agency does so without adequately considering whether it acted in the best interest of the Government. Additionally, we believe that SBA management should consider not approving any further requests to use IBC's contracting services until the Agency develops and implements a process that meets requirements of Federal regulations to ensure the use of SBA's funds obligated for assisted acquisitions are indeed necessary (see Recommendation 8). This recommendation can be closed when SBA provides evidence supporting the best procurement approach determinations for each assisted acquisition.

- 10. Develop a formalized review process for Part B funding documents to ensure Agency funds are used in accordance with Federal regulations. The formalized review process should be documented to include: identifying SBA department personnel roles and responsibilities for reviewing the funding documents, and an approval mechanism for accountability and transparency.**

**Resolved.** This recommendation is resolved based on SBA's agreement to document the review process. SBA management plans to complete final action by January 2017. This recommendation can be closed upon SBA providing evidence supporting that the review process has been documented and identifies the roles and responsibilities of SBA department personnel involved in the review process, including an approval mechanism.

- 11. Establish and implement clear, written policies and procedures for obligating funds for SBA contracts.**

**Resolved.** This recommendation is resolved based on SBA's agreement to issue clear, written guidance to program offices on use of funds for contracting, where program offices enter requisitions that request multiple sources of funding. SBA plans to complete final action on this recommendation by January 2017. This recommendation can be closed upon SBA providing evidence supporting that it issued guidance to the program offices on using funds for contract requirements that require multiple fund sources.

- 12. Require SBA program and management office acquisition personnel to include justification for using SBA funds for each acquisition request in the Acquisition Plan. Ensure that policy is established to require SBA acquisition community to clearly identify the nature of the contract and justify the use of the selected funds are consistent with the funds purpose.**

**Resolved.** This recommendation is resolved based on SBA's agreement to use the Advanced Acquisition Strategy to document the use of funds justification and plans to complete action on this recommendation by January 2017. This recommendation can be closed upon SBA providing evidence supporting that it issued policy to SBA's acquisition community to require clear identification of the nature of the contract requirement and justifications for the funding used for the requirement and provide clarification that the documented funding justifications are included in the contract file.

- 13. If GAO opines SBA's use of disaster funds for LMAS modernization efforts improperly augmented the allowable amount Congress intended, SBA needs to: (1) identify the total amount of disaster funds used for LMAS modernization efforts, (2) deobligate the disaster funds that exceed the allowable transfer authority for augmenting LMAS funds, and (3) obligate LMAS funds that meet the Bona Fide Needs Rule for the contract. Determine whether sufficient LMAS funds are available, and if sufficient funds are not available SBA should report an Antideficiency Act violation in accordance with procedures prescribed in OMB Circular A-11, §145.**

**Closed.** This recommendation is closed based on GAO's opinion.

## Appendix I: Scope and Methodology

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Our objectives were to determine whether SBA's procurement practices for contracts to acquire IT products and services: (1) followed Federal Acquisition Regulations (FAR) and SBA's *Acquisition Standard* for ensuring fair and reasonable contract prices, (2) complied with Federal regulations on interagency assisted acquisitions, and (3) ensured funds were used in compliance with Federal appropriations regulations.

To answer our objectives, we identified a universe of 70 contracts for IT products or service contracts with obligated contract values greater than or equal to \$500,000 awarded during FYs 2013 and 2014, which accounted for \$87.9 million of SBA-funded contracts reported in the Federal Procurement Data System-Next Generation (FPDS-NG) as of October 6, 2014. The SBA Deputy CFO identified the program office for each of the IT contracts. We selected 12 contracts, 6 awarded by SBA contracting officers and 6 awarded by IBC contracting officers on behalf of SBA, based on the highest dollar awards, program offices supported, and contract type. The six SBA contracts had obligated values of \$17.2 million and estimated total contract values of \$50.7 million and the six IBC contracts had obligated values of \$14.1 million and estimated total contract values of \$47.7 million.

We reviewed contract files for a number of documents to address our objectives, including contract award decision documents, legal reviews, contractor price proposals, IGCEs, acquisition plans, and other relevant award documents. We also interviewed contracting and program officials from OCFO, OCIO, OCA, and ODA to gain a better understanding of how SBA conducts and carries out its acquisition function. We also reviewed SBA's *Acquisition Standard*, the FAR, and guidance from other Federal agencies, including the Office of Management and Budget and GAO, as a basis for our audit.

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We relied on data reported in FPDS-NG to develop our audit universes and select our judgmental audit samples for SBA and IBC awarded IT product and services contracts. We verified that data recorded in FPDS-NG matched the information contained in each contract file that we reviewed. As a result, we believe the information is reliable for the purposes of this audit.

### Review of Internal Controls

The Office of Management and Budget Circular A-123 provides guidance to Federal managers on improving the accountability and effectiveness of Federal programs and operations by establishing, assessing, correcting, and reporting on internal controls. While SBA has a standard operating procedure related to internal controls, we determined that significant internal control weaknesses existed.<sup>67</sup> Specifically, we found that SBA's acting CFO, who also serves as the Agency's CAO, participated as a member of a TET, which may have compromised her ability to objectively perform evaluations of SBA's acquisition process. In our judgment, the acting CFO's involvement as a voting

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<sup>67</sup> Standard Operating Procedure 00 02, *Internal Control Systems* (January 1986).

member on the TET is incompatible with the CAO's duty to monitor the acquisition function. Further, SBA did not establish and implement clear, written policies and procedures that ensure that CAO duties are kept separate from those of the CFO. Due to unclear lines of authority, SBA puts itself at risk for not being able to meet its mission in an efficient and effective manner.

Additionally, during our review of SBA's use of assisted acquisitions, we found SBA was not in compliance with the FAR requirement to perform and document best procurement approach determinations.<sup>68</sup> We found no evidence of best procurement approach determinations being made prior to SBA entering into an assisted acquisition interagency agreement with the DOI's IBC.

Also, SBA has not established policy or guidance to direct SBA program offices on how to allocate Agency appropriations for funding contracts. We found SBA program offices were using unsupported ratios and did not document in the contract files the use of multiple funds.

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<sup>68</sup> FAR 17.502-1(a)(1) and FAR 17.500(c)(2).

## Appendix II: Schedule of Dollar-Related Findings

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**Table 3a. OIG Schedule of Questioned Costs<sup>69</sup>**

<b>Amount</b>	<b>Description</b>	<b>Explanation</b>
\$609,631	Unsupported service fees	Expended SBA funds for IBC contract service fees for the six assisted acquisitions we reviewed.
<b>\$609,631</b>	<b>Total Questioned Costs</b>	

Source: Generated by OIG based on analysis of SBA's funds used for IBC's contracting services.

**Table 3b. OIG Schedule of Funds Put to Better Use<sup>70</sup>**

<b>Amount</b>	<b>Description</b>	<b>Explanation</b>
\$1,342,438	Potential unsupported spending on service fees	These funds represent the total amount of funds we estimate SBA will spend on IBC's contracting services if all contract options, for the six assisted acquisitions we reviewed, are fully exercised based on the IBC contract award documentation. These fees paid to IBC for contracting services may not be the best procurement approach and as such, not in the best interest of the Government
<b>\$1,342,438</b>	<b>Total Funds Put to Better Use</b>	

Source: Generated by OIG based on OIG's analysis of the IBC service fees for exercising all of the contracts options.

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<sup>69</sup> Questioned costs are expenditures that are not supported by adequate documentation at the time of the audit or otherwise do not comply with legal, regulatory, or contractual requirements.

<sup>70</sup> Funds put to better use are future funds that could be used more efficiently if management took actions to implement and complete audit recommendations.

## Appendix III: SBA's Split Funding Explanations

According to SBA's Deputy CFO, using multiple funding types for 8 of the 12 contracts we reviewed was justifiable based on his detailed explanations in Table 4 below. However, the Deputy CFO's justifications often include references to undocumented policy enacted by former SBA officials, and the contract files lack documentation to support distributing obligated funding to support the portions of the contracts, as explained below.

**Table 4. SBA's Deputy CFO's explanations for the use of split funding for eight contracts.**

Contract	Deputy CFO Explanation
Contracts funded with Salaries and Expenses, LMAS, and Disaster funds	
SBAHQ-13-C-0013	This contract contained a mix of LMAS and non-LMAS projects. The total cost of the LMAS project was \$575,540.60 and it was funded with a 50/50 split between LMAS two year funding and LMAS no-year disaster funding. The non-LMAS part of the contract (\$999,999.96) was funded by OCA with one year funds.
SBAHQ-14-C-0014	This contract contained a mix of LMAS and non-LMAS projects. The total cost of the LMAS project was \$4,192,679.24 and it was funded with a 50/50 split between LMAS two year funding and LMAS no-year disaster funding. The non-LMAS part of the contract (\$585,760.49) was funded by OCA with one year funds.
SBAHQ-14-F-0075	This contract contained a mix of LMAS and non-LMAS projects. The total cost of the LMAS project was \$233,640 and it was funded with a 50/50 split between LMAS two year funding and LMAS no-year disaster funding. The non-LMAS part of the contract (\$1,422,982.08) was primarily for the Joint Accounting and Administrative System (JAAMS) and it was funded with a split of 62 percent one year funding and 38 percent no-year disaster funding.
SBAHQ-14-F-0120	This contract contained a mix of LMAS and non-LMAS projects. The non-LMAS part of the contract (\$3,200,000) was funded by OCA with one year funds. The total cost of the LMAS project was \$2,170,896.32 and it was funded with a 61/39 split between LMAS two year funding and LMAS no-year disaster funding. The requisition originally contained an LMAS cost of \$2,629,216 with a 50/50 split between two year funding and no-year disaster funding. Whenever a final LMAS contract price is lower than the commitment amounts on the requisition, the contracting officers obligate in the following priority order – one year funding, LMAS two-year funding, and then LMAS no-year disaster funding.
Contracts funded with LMAS and Disaster Funds	
SBAHQ-14-F-0071	The total cost of the LMAS project was \$872,414.29 and it was funded with a 50/50 split between LMAS two year funding and LMAS no-year disaster funding.
IND13-PD-01505	The contract supports the LMAS project. The Deputy CFO explained funding for the LMAS project is approximately a 50/50 split between LMAS funding and disaster funding. DOI's Intra-Governmental Payment and Collection (IPAC) document referenced the same accounting lines, but it is not how SBA recorded them in JAAMS. We detected the error during the IPAC reconciliation process. JAAMS records show that we set up two different obligations and the two different accounting lines in accordance with Part B of the contract.

Contracts funded with Salaries and Expenses and Disaster Funds	
SBAHQ-13-M-0092	This was for an OCIO contract that was funded with a mix of one year and no-year disaster funds. The contract was supposed to be awarded with a funding split of 49 percent one year funding and 51 percent disaster funding. However the former Chief Technology Officer used the prior year's funding allocation of 46 percent to 54 percent by mistake.
IND14-PD-00960	The variance between the salaries and expenses and Disaster funds on the DOI WEB Apps contract was because last year OCIO needed to extend the incumbent contract, which was the prior WEB Apps contract, and the TSPI (Database Support contract). These two contracts were extended with salaries and expenses funds, rather than a mix of salaries and expenses and disaster funds. The total amount of the extensions using salaries and expenses funds was \$1,013,590. As a result, the funding for the Part B was adjusted accordingly. The Deputy CFO stated that when he looked at the total FY14 spend on these services, SBA actually obligated \$4.9 million rather than \$3.9 million, which was the amount showing on the Part B. Therefore, the actual percentage split in FY14 for these services was 53% disaster funds and 47% salaries and expenses funds.

SBA  
OFFICE OF THE CHIEF FINANCIAL OFFICER'S  
RESPONSE TO AUDIT REPORT





**U.S. SMALL BUSINESS ADMINISTRATION**  
**WASHINGTON, D.C. 20416**

**DATE:** October 2, 2015

**TO:** Troy M. Meyer  
Assistant Inspector General for Auditing

**FROM:** Tami Perriello  
Associate Administrator for Performance Management and  
Chief Financial Officer

**SUBJECT:** Comments on OIG Audit Report "SBA Needs to Strengthen Its Information  
Technology Procurement Practices to Ensure Adequate Planning and Financial  
Oversight"

We appreciate the opportunity to provide comments on the above referenced draft audit report and wish to thank the Inspector General's staff for their consideration of our concerns with the report.

**SUMMARY**

In order to support its programs and operations, SBA has made it a priority to significantly improve the general quality of its Information Technology (IT) services. Much of the existing IT equipment at the Agency is past the end of its useful life and needs to be replaced, and the Agency is working to improve its cybersecurity and the extent to which its program services are automated. To support these efforts, the Agency and the Acquisition Division (AD) have taken significant steps to ensure that funds spent in support of these IT functions are spent prudently and wisely. Among other things, the Agency has enhanced its IT governance processes to ensure that proper oversight of IT purchases occurs. Moreover, during the past fiscal year, the AD contracting officers attended a formal training class specifically geared toward IT acquisition to enhance their skills. We think the ongoing efforts of the Agency in this regard have done a good job of accomplishing our goal of making sure taxpayer funds spent on IT improvements are effectively used.

The draft report reviews more than \$98 million in contracts awarded for IT projects. Although the review did not identify any disallowed expenditures, the report raised questions about the processes related to approximately \$1.3 million in expenditures and questioned the funding type identified for \$4.1 million in contracts (Appendix II). In this response, SBA provides detailed information about the basis of our actions in order to answer your questions. SBA is always looking for ways to improve our programs; therefore, we appreciate and accept many of the report's recommendations suggesting areas where additional training or more specific policies may be appropriate.

The Agency is concerned about the draft report's general tone with regard to use of legitimate procurement devices like 8(a) sole source contracts, that could be viewed as being skeptical of such

devices. As the agency responsible for promoting access to government contracts by disadvantaged small businesses through sole source contracts under the statutory 8(a) program, SBA wants to ensure that there is no suggestion that there is something suspect in using 8(a) procurement when it is exercised consistent with the statute and regulations. Particularly in cases where, as here, SBA would be able to use historical information with an incumbent provider to show that the costs quoted by the disadvantaged 8(a) firm were reasonable and where an eligible firm received an award.

We also wish to express our concern with the following findings in the audit report:

- The report finds that awards under \$4 million in the 8(a) program should have been awarded through competitive processes because the SBA “could have” requested it. From this, the report concludes that SBA did not receive “competitive prices”. Because this was an incumbent vendor, however, SBA had access to the information necessary to make a fair and reasonable determination on price. Contracting officers have complete access to review the offeror’s profit margins and cost analysis documentation in this process. Further, SBA’s 8(a) program is an exception to the FAR competitive process requirements and SBA will continue to use the program as provided under the regulations.
- For the same contract, the report asserts that the vendor was not eligible for sole source contracts. The procuring agency (SBA’s Acquisition Division in this case) is not responsible for determining whether or not a firm is eligible for sole source awards. That is one of the purposes of the 8(a) offer and acceptance process. In addition, the offer letter was received on May 1, 2013 and accepted on May 6, 2013. The firm’s program year did not end until May 9, 2013. Thus, at the time of acceptance, the 8(a) program participant was eligible for award of sole source contracts. The annual review is completed after the end of the program year, and that is when a sole source prohibition can be put into place. The system of record indicates that the sole source restriction was put into place on July 18, 2013 for the program year ending May 9, 2014. Consequently, all available evidence indicates that the awardee was eligible for the 8(a) contract.
- The report concludes that a “potential separation of duties issue” existed because of the participation of the then acting CFO on a technical evaluation team. That conclusion is unsupported by any specific findings regarding the award. The acting CFO, who implemented the systems in question and authored the statement of work, participated with the approval of the properly designated and independent Senior Procurement Executive and the Contracting Officer. The acting CFO was advised by them of her responsibilities and limitations related to this action and as part of a team, took no actions to assert undue influence.
- The report contends that a best value determination was not properly conducted because lower priced vendors offered the “same specific strengths” and that the evaluation team weighted one area of the requirement more heavily, resulting in a lack of transparency. We disagree that the proposals were not given equal consideration and possessed identical qualifications. The

technical proposals were rated similarly during the initial scoring phase, where the agency reviews proposals independently of one another. But in the subsequent best value phase, the agency compares proposals against one another to determine which proposal presents the best value to the agency. This is typically referred to as a “trade-off” analysis. The best value determination process is the first time that the agency compares responses and evaluates whether the strengths and weaknesses of a proposal merit paying a cost differential as compared to another proposal. A qualified technical evaluation team determined that the relative differences in strengths and weaknesses between proposals were sufficient to justify the higher price and were advised by the contracting officer as to how to document the differences and trade-offs identified.

- For the same contracting action, the report makes reference to discussions between the contracting officer and Office of General Counsel as evidence that the best value determination was improper. We reject that suggestion; it is normal operating procedure for contracting officers and attorneys to discuss the adequacy of documentation for a major acquisition action.
- The report suggests that SBA incurs “unnecessary service fees” when IBC awards a contract on behalf of SBA to a contractor with which SBA could have itself negotiated a contract. This fails to consider that IBC has familiarity and expertise with IT contracting and with particular contractors that SBA may lack in specific situations. Furthermore, because agencies negotiate discounts on an order-by-order basis, IBC may be able to obtain discounts and economies of scale that SBA would not. Using IBC services also permits SBA to best deploy its acquisition workforce to assist with the agency’s most critical procurements, and to have capacity to meet intense acquisitions needs, such as end-of-the-year purchasing. Indeed, an internal SBA analysis indicated that—when compared to SBA’s own acquisition costs for an SBA-conducted procurement—IBC’s service fees are reasonable.

#### **RESPONSE TO RECOMMENDATIONS:**

As a result of our concerns about the basis for some of the report’s conclusions, unfortunately SBA cannot concur with all recommendations. Furthermore, there are recommendations for which the report’s proposed solution is neither cost effective nor appropriately targeted. In these cases, SBA has partially concurred and described a corrective action we believe addresses OIG’s concerns appropriately. Our responses to each recommendation are detailed below:

*Recommendation 1 – Establish policy and procedures to ensure the individual responsible for the Chief Acquisition Officer’s duties does not participate as a voting member in future technical evaluations.*

SBA non-concurs with this recommendation. The participation of the acting CFO on the technical evaluation team was a unique situation and sufficient mitigating controls were in place to prevent any separation of duties issues. SBA is not required to appoint a CAO under any regulation and the new acquisition SOP will not identify a CAO.

*Recommendation 2 – Establish and implement clear written policies and procedures for preparing IGCEs and analyzing contractor proposed costs to ensure prices are fair and reasonable.*

SBA concurs with this recommendation. Policies and procedures addressing the documentation of IGCEs will be added to the new acquisition SOP.

*Recommendation 3 – Establish policies and procedures requiring contracting officers to document and analyze significant cost discrepancies between contractors proposed prices and IGCEs, especially when negotiating sole-source contract award actions.*

SBA concurs with this recommendation. Policies and procedures addressing the documentation of analysis of cost discrepancies will be added to the new acquisition SOP.

*Recommendation 4 – Establish and implement clear, written policies and procedures for conducting fair and equitable reviews of competitive offers or proposals for all SBA personnel who perform technical evaluations that support agency acquisition determinations.*

SBA partially concurs with this recommendation. To ensure consistency in approach, procedures for documentation of the contracting officer's determination will be added to the new acquisition SOP. The procedure will include obtaining an opinion of legal sufficiency regarding the contracting officer's potential determination. However, because the best value determination process is tailored to each action based on the needs of the agency and the program office, standard evaluation factors and criteria or prescribed approaches to evaluation will not be included in the procedures. Contracting officers will continue to provide guidance and instructions to technical evaluation teams for each competitive review.

*Recommendation 5 – Provide training to SBA contracting and program personnel on the changes to policies and procedures identified above as part of Recommendations 2, 3, and 4.*

SBA partially concurs with the recommendation. Communication regarding the policy changes will be issued to make program personnel aware of the new policies and/or procedures. However, training will be provided only to Acquisition Division staff and contracting officer representatives.

*Recommendation 6 – Provide training to SBA contracting and program personnel on 8(a) Business Development Program contracting limitations and the appropriate use of the Non-Manufacturer Rule.*

SBA partially concurs with the recommendation. Training on the 8(a) program contracting limitations and the Non-Manufacturer Rule will be limited to Acquisition Division staff.

*Recommendation 7 – Update the interagency agreement to ensure the service fee adjustment negotiated in 2014 is incorporated into the general terms and conditions of SBA's interagency agreement with IBC and request concurrence from IBC contracting services branch chief.*

SBA concurs with the recommendation. The IBC interagency agreement will be updated.

*Recommendation 8 – Develop policies and procedures for interagency acquisitions so that SBA is in compliance with Federal requirements to achieve the greatest value possible from interagency acquisitions.*

SBA partially concurs with the recommendation. Internal procedures will be developed to standardize the review process for assisted acquisition interagency agreements so that documentation is proper. SBA does not agree that the current review process is not compliant with Federal requirements but acknowledges that the process and documentation can be improved.

*Recommendation 9 – Prior to exercising any further options on the IBC awarded contracts, make a determination on whether using IBC's contracting services is the best procurement approach, especially for requirements awarded as task orders against General Services Administration Government-wide Acquisition Contracts or Federal Supply Schedule contracts.*

SBA non-concurs with this recommendation. SBA has documented a determination for each acquisition submitted to IBC that it is the best procurement approach. The exercise of option years on existing contracts reduces the costs of reissuing new awards.

*Recommendation 10 – Develop a formalized review process for Part B funding documents to ensure agency funds are used in accordance with Federal regulations. The formalized review process should be documented to include: identifying SBA department personnel roles and responsibilities for reviewing the funding documents, and an approval mechanism for accountability and transparency.*

SBA partially concurs with the recommendation. The review process has been standardized but we agree that the process, roles and responsibilities should be documented. SBA does not concur that funds used were not in accordance with Federal regulations.

*Recommendation 11 – Establish and implement clear, written policies and procedures for obligating funds for SBA contracts.*

SBA partially concurs with the recommendation. SBA will issue clear written guidance to program offices on use of funds for contracting, where program offices enter requisitions that request multiple sources of funding.

*Recommendation 12 – Require SBA program and management office acquisition personnel to include justification for using SBA funds for each acquisition request in the Acquisition Plan. Ensure that policy is established to require SBA acquisition community to clearly identify the nature of the contract and justify the use of the selected funds are consistent with the funds purpose.*

SBA partially concurs with the recommendation. We do not agree that the Acquisition Plan is the appropriate place to document use of funds; instead the Advance Acquisition Strategy will be used. We do not agree that it is the responsibility of the contracting officers to justify use of funds, purpose of contracts, or purpose of funds.

*Recommendation 13 – If GAO opines SBA’s use of disaster funds for LMAS modernization efforts improperly augmented the allowable amount Congress intended, SBA needs to: (1) identify the total amount of disaster funds used for LMAS modernization efforts; (2) deobligate the disaster funds that exceed the allowable transfer authority for augmenting LMAS funds; and (3) obligate LMAS funds that meet the Bona Fide Needs Rule for the contract. Determine whether sufficient LMAS funds are available, and if sufficient funds are not available SBA should report an Antideficiency Act violation in accordance with procedures prescribed in OMB Circular A-11, §145.*

Due to the speculative nature of this recommendation, as well as what we view as the report’s mischaracterization of the LMAS funds, it is premature to respond to this conditional recommendation until we receive GAO’s opinion on this matter.