

**SBA'S PROCUREMENT OF INFORMATION
TECHNOLOGY HARDWARE AND SOFTWARE
THROUGH ISIKA TECHNOLOGIES, INC.**

Report Number: 11-08

Date Issued: February 25, 2011



U.S. Small Business Administration
Office of Inspector General

Memorandum

To: Jon I. Carver
Chief Financial Officer

Date: February 25, 2011

From: /s/ Original Signed
Peter L. McClintock
Deputy Inspector General

Subject: Audit on SBA's Procurement of Information Technology Hardware and Software through Isika Technologies, Inc., Project No. 10018

This report presents the results of our audit of SBA's procurement of information technology (IT) hardware and software through Isika Technologies, Inc. (iTechnologies). The objective of this audit was to determine whether SBA officials: (1) properly planned and awarded contracts to iTechnologies for the procurement of manufactured IT hardware and software; and (2) accurately reported contract data for these awards to the Federal Procurement Data System – Next Generation (FPDS-NG)¹.

To achieve the first audit objective, we reviewed pertinent Code of Federal Regulations (CFR), Federal Acquisition Regulations (FAR), SBA's Standard Operating Procedure (SOP) 00 11 1H, *Annual Acquisition Strategy and Procurement Planning*, and iTechnologies contract files. We also interviewed personnel from the Office of the Chief Information Officer (OCIO), the Office of Business Operations, and the contractor. To address the second audit objective, we compared data in the contract files to a limited number of data fields reported by SBA to FPDS-NG. We conducted our review between August 2010 and November 2010 in accordance with *Government Auditing Standards* prescribed by the Comptroller General of the United States.

BACKGROUND

During fiscal years (FY) 2009 and 2010, SBA awarded two Indefinite-Delivery/Indefinite-Quantity (IDIQ) contracts, a Blanket Purchase Agreement (BPA), and five purchase order contracts totaling nearly \$7.6 million for IT hardware and software, as follows:

- On September 21, 2009, SBA awarded a 5-year IDIQ contract to iTechnologies for \$5 million to procure IT hardware and software.

¹ FPDS-NG is a comprehensive, web-based tool used by Federal agencies to report contract actions that is available to Congress and the general public for informational purposes.

- One week later, the contracting officer increased the contract value to \$5.442 million via a contract modification.
- On December 9, 2009, SBA awarded a 2-year IDIQ contract to iTechnologies for \$2 million for the same IT hardware and software requirement.
- In January 2010, SBA de-scoped \$1,372,260 from the initial IDIQ contract, and awarded a BPA to iTechnologies on February 16, 2010, for the same value using Recovery Act funds.
- In March and April 2010, SBA awarded five purchase order contracts under the first IDIQ contract for nearly \$150,000 to iTechnologies to procure IT hardware and software.

All of these awards, listed in Table 1, were made for the same IT hardware and software requirement on a sole-source basis under the 8(a) Business Development Program.² At the time of these awards, SBA's Associate Administrator (AA) for Management and Administration (M&A) was responsible for the procurement function.³

Table 1
Contracts Awarded to iTechnologies for the
Procurement of IT Hardware and Software

Date	Contract Vehicle	Contract Number	Initial Contract Value	Contract Value Including Modifications
9/21/2009	IDIQ	SBAHQ-09-D-0009	\$ 5,000,000	\$ 4,070,480
12/09/2009	IDIQ	SBAHQ-10-D-0001	2,000,000	2,000,000
2/10/2010	BPA	SBAHQ-10-A-0001	1,372,260	1,372,260
3/11/2010	Purchase Order	SBAHQ-10-M-0111	76,369	76,369
3/19/2010	Purchase Order	SBAHQ-10-M-0118	16,198	16,198
3/19/2010	Purchase Order	SBAHQ-10-M-0119	11,847	11,847
4/05/2010	Purchase Order	SBAHQ-10-M-0130	40,067	40,067
4/10/2010	Purchase Order	SBAHQ-10-M-0135	3,287	3,287
			\$ 8,520,028	\$ 7,590,508

IDIQ contracts are appropriate for procuring supplies and services when the government anticipates recurring requirements but cannot determine the precise quantities that will be needed within a specific period. An IDIQ typically establishes a minimum quantity of supplies and services to be purchased and may establish a maximum as well. Contracting officers then issue task or delivery orders against the IDIQ to purchase supplies and

² The SBA 8(a) Business Development Program was created to assist eligible small disadvantaged business concerns compete in the American economy through business development.

³ On October 1, 2010, the SBA Administrator transferred the Agency's internal procurement responsibility from the AA for M&A to the Office of the Chief Financial Officer (OCFO).

services that fulfill the Government's needs. FAR Subpart 16.5, *Indefinite-Delivery Contracts*, establishes a preference for awarding IDIQ contracts to multiple contractors rather than to a single contractor.

BPAs are similar to IDIQ contracts in that they allow the Government to order supplies and services when there is a variety of similar products required, but the exact items and quantities are unknown. However, BPAs do not justify purchasing from a single source and the requirements of FAR Subpart 19.5, *Set-Asides for Small Business*, still apply.

Several recent SBA Office of Inspector General (OIG) reports contain findings similar to those in this report. Report Number 10-08, *SBA's Efforts to Improve the Quality of Acquisition Data in FPDS*, dated February 26, 2010, disclosed that almost all contract actions reported in FPDS-NG for FYs 2008 and 2009 data contained at least one inaccurately reported FPDS-NG data element. As of December 17, 2010, SBA had not implemented any corrective actions to satisfy the recommendations made in this report. SBA OIG Recovery Oversight Memorandum 10-16, *SBA's Planning and Award of the Customer Relationship Management Contracts* dated June 29, 2010, reported that SBA violated the Non-manufacturer Rule⁴ by issuing an 8(a) contract for a requirement that did not qualify for small business award.

RESULTS

SBA inadequately planned and inappropriately awarded two 8(a) sole-source IDIQ contracts and a BPA to iTechnologies for the procurement of IT hardware and software. Specifically:

- The designated acquisition planner did not prepare, coordinate, or obtain approval for a comprehensive, written acquisition plan, as required by the FAR and internal SBA guidance.
- The contracting officer awarded the IDIQ contracts and BPA without first ensuring that an appropriate acquisition plan had been implemented and approved for this requirement.
- The contracting officer classified these contracts using incorrect North American Industry Classification System (NAICS) codes.
- The IDIQ contracts and BPA awarded to iTechnologies did not qualify as 8(a) sole-source procurements under the Non-manufacturer Rule.

⁴ 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.

- SBA contracting personnel split the same requirement among the two IDIQ contracts and a BPA which circumvented 8(a) sole-source procedures established by the FAR.
- SBA inaccurately reported to FPDS-NG at least one data element relating to 100 percent⁵ of the iTechnologies actions.

As a result, SBA: 1) did not have reasonable assurance that it received the best value in these contracts; 2) violated the Competition in Contracting Act and federal regulations; and, 3) misled FPDS-NG users by providing inaccurate data.

The Procurement of IT Hardware/Software was Inadequately Planned

Acquisition planning is the most critical part of the acquisition process and establishes the direction for subsequent actions throughout the procurement. According to the FAR, the purpose of acquisition planning is to ensure that the Government meets its needs in the most effective, economical, and timely manner. FAR Part 7, *Acquisition Plans*, Subpart 102 (FAR 7.102) states that agencies shall perform acquisition planning and conduct market research for all acquisitions. To ensure that the acquisition process is consistent, the FAR states that acquisition planning should begin as soon as an agency need is identified and involve contracting, fiscal, legal, and technical personnel. The FAR requires a written acquisition plan that addresses all technical, business, management, and other significant considerations that will control the acquisition.

SBA did not complete adequate acquisition planning for the procurement of IT hardware and software from iTechnologies. While SBA prepared a draft acquisition plan, significant sections of the plan were not in conformance with the FAR and the plan was not approved by required personnel. FAR 7.105 requires that acquisition plans include, among other things, a statement of need, reliable cost estimates, procurement risk, risk mitigation strategies, and an explanation of the business strategy. SBA's draft acquisition plan did not include or adequately address all of these elements. Specifically:

- The plan stated that SBA needed to procure IT hardware or software from an 8(a) company but did not provide the rationale for why the equipment was needed (i.e., whether the property would replace old or outdated equipment, be used to supplement existing equipment, or be acquired for a specific use).
- The plan included a cost estimate of \$5 to \$10 million for the initial IDIQ contract, based on the projected minimal annual purchase of hardware. However, no support was provided for the cost estimate.
- The acquisition plan did not identify an adequate mitigation strategy for performance risks. Rather, the acquisition plan states to mitigate cost risk, SBA

⁵ All 120 contract actions we reviewed had one or more data elements incorrectly reported by SBA to FPDS-NG.

would provide additional funds. Providing additional funding is not a sufficient strategy for mitigating cost risk.

- The business approach, including procurement methods, was not identified within the acquisition plan.

According to the FAR, the contracting officer should meet early and often with the acquisition planner to ensure that the plan fully supports the proposed acquisition approach. Because the contracting officer was not involved with acquisition planning, the planner presented a deficient acquisition plan that did not address significant contracting procedures. Had contracting personnel been involved with acquisition planning, many of the issues and risks associated with the contract awards to iTechnologies may have been mitigated or eliminated by sound analysis and planning.

In addition to the lack of contracting officer involvement in developing the acquisition plan, such plans are required to be approved by various SBA officials; this was not done for the draft acquisition plan. FAR Part 7, *Acquisition Plans*, Subpart 103 (FAR 7.103) states that Agency Heads shall prescribe procedures for reviewing and approving acquisition plans and revisions to those plans. According to SOP 00 11 1H, *Annual Acquisition and Procurement Planning*, no procurement action shall be taken prior to the approval of the planned acquisition by the Associate AA for M&A. Further, IT acquisitions exceeding \$500,000 must be approved by nine additional SBA officials and receive concurrence from the competition advocate and the Office of General Counsel (OGC). Because the IT hardware and software acquisition plan was not appropriately reviewed or approved, the contracting officer should not have awarded the contracts to iTechnologies.

It appeared that the first procurement was awarded in an expedited manner to use the unobligated FY 2009 funds. The Agency disregarded required acquisition planning and normal clearance procedures, including a legal review by OGC. A simple review of the acquisition plan would have revealed numerous deficiencies.

This procurement created a risk to the Agency because the draft acquisition plan was inadequate and incomplete. SOP 00 11 1H acknowledges this potential risk by stating that “failure to plan acquisitions and to schedule the overall acquisition workload has resulted in an inordinate number of contract awards being made in the closing weeks, days and hours of the fiscal year, and has not always resulted in obtaining the best source of supply on the best terms for the Agency”.

SBA Used Incorrect NAICS Codes

SBA used incorrect NAICS codes to determine the size standards for procuring IT hardware and software from iTechnologies. SBA uses NAICS codes to determine whether firms meet the size standards to qualify as small businesses in different industries. According to 13 CFR 121.402, *What Size Standards are Applicable to Federal Government Contracting Programs*, the contracting officer designates

the NAICS code that best describes the principal purpose of the product being acquired. The procurement is usually classified according to the component that makes up the greatest percentage of contract value. In addition, procurements for supplies must be classified under the appropriate manufacturing code, not under the wholesale trade NAICS code.

Since IT hardware and software are supplies, SBA should have used NAICS code 334111, *Electronic Computer Manufacturing*, for the procurement of IT hardware and software from iTechnologies. Instead, SBA incorrectly classified contract SBAHQ-09-D-0009, under NAICS code 541519, *Other Computer Related Services*. In addition, SBA did not identify the NAICS code for any of the five purchase order contracts, (SBAHQ-10-M-0111, SBAHQ-10-M-0118, SBAHQ-10-M-0119, SBAHQ-10-M-0130, or SBAHQ-10-M-0135); and it incorrectly reported NAICS code 423430, *Computer and Computer Peripheral Equipment and Software Merchant Wholesalers*, to FPDS-NG. Further, SBA incorrectly classified contract SBAHQ-10-D-0001 and BPA SBAHQ-10-A-0001 under NAICS code 423430. Had these procurements been properly classified as supply contracts, it would have been apparent that the Non-manufacturer Rule (described below) applied.

The Requirement Did Not Qualify for an 8(a) Sole-Source Procurement

SBA pursued an 8(a) contractor to procure IT hardware and software. Because hardware and software are tangible manufactured items, the procurement was subject to the Non-manufacturer Rule. 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, a small business must either be: (1) the manufacturer of the item being purchased, to include modification of an end item of which the small business increased the value by 50 percent or more; or (2) a non-manufacturer, which normally sells the type of item being supplied and the end item must be the product of a small business, or the contracting officer must obtain a waiver from the SBA Administrator. iTechnologies did not qualify as a manufacturer because they do not produce hardware or software, nor did they add 50 percent or more value to the end products required by SBA. iTechnologies also did not qualify as a non-manufacturer because the end products were not those of small businesses, nor did SBA obtain the requisite waiver authorizing the sale of the end products of large businesses, such as Dell, Hewlett Packard, and Adobe.

The acquisition team should have recognized that neither a small business nor an 8(a) set aside contract should be awarded because the procurement would result in a “pass through” to large businesses. According to iTechnologies personnel, iTechnologies is unable to purchase IT hardware and software directly from manufacturers such as Hewlett Packard and Adobe. Therefore, iTechnologies⁶ subcontracted through Ingram Micro, a Fortune 100 company, to obtain much of the IT hardware and software needed to meet SBA’s requirement. In addition, some of the items SBA received through

⁶ It appears that another non-8a small business, The Look Enterprises, was also involved in ordering items on behalf of iTechnologies.

iTechnologies were marked with Costco labels. Essentially, iTechnologies served as an “order taker,” which in turn, ordered IT hardware and software items from large business suppliers or from the manufacturer. Although the procurement did not qualify for an 8(a) award, SBA reported 46 percent of contract actions for the procurement as 8(a) contract awards, which inappropriately resulted in SBA receiving credit for small business, 8(a) contracting in its annual small business procurement goaling report. We believe that misreporting damages the integrity of SBA and its programs. As the Federal government’s small business advocate, SBA should discourage misuse of the 8(a) program and promote its integrity. Failure to follow program requirements, however, sends the opposite message.

SBA Split the Requirement Which Circumvented 8(a) Sole-Source Limits

In addition to not qualifying as an 8(a) procurement because the requirement did not meet the Non-manufacturer Rule, SBA split the requirement, which circumvented 8(a) sole-source limits. A procurement offered and accepted for the 8(a) Business Development Program must be competed among eligible 8(a) firms if the anticipated award price will exceed \$5.5 million⁷ for manufactured products. SBA identified a minimum cost range of \$5 to \$10 million for this requirement. According to CFR 124.506, for IDIQ type contracts, the thresholds are applied to the maximum order amount authorized. Therefore, this procurement did not qualify for an 8(a) sole-source contract award.

The Competition in Contracting Act of 1984 (CICA) established a preference for awarding contracts on the basis of competition. Instead of competing the procurement, SBA used 8(a) sole-source procurements, which is an authorized exception to the CICA. However, the procurement did not meet the 8(a) requirements because it did not comply with the Non-manufacturer Rule and because the overall requirement exceeded the 8(a) sole-source limits. According to FAR 19.805-1, *Competitive 8(a)*, a proposed 8(a) requirement with an estimated value exceeding the applicable threshold shall not be divided into several requirements in order to use 8(a) sole-source procedures for award to a single firm.

Despite the fact that FAR 19.805 explicitly prohibits the splitting of requirements, SBA chose to award multiple contracts to a single contractor using 8(a) sole-source procedures. SBA split the requirement to procure IT hardware and software among several contract vehicles, including two IDIQ contracts, a BPA, and five purchase order contracts. The first two IDIQ contracts, totaling \$7.4 million⁸, were issued within 11 weeks of each other. All eight contract vehicles were awarded in less than seven months.

⁷ On October 1, 2010, a revision to FAR 19.805 increased the competitive threshold for manufacturing NAICS codes to \$6.5 million and \$4 million for all other acquisitions.

⁸ IDIQ contracts SBAHQ-09-D-0009 and SBAHQ-10-D-0001 are valued at \$5.0 million and \$2.0 million respectively. On September 28, 2009, SBA increased the value of IDIQ contract SBAHQ-09-D-0009 to \$5,442,740 via Modification 0001.

SBA Inaccurately Reported Contract Data to the FPDS-NG

SBA inaccurately reported at least one data element to FPDS-NG relating to 100 percent of the 120 contract actions associated with the awards made to iTechnologies. The primary areas of inaccurate reporting included contract value, type of funding, competition characteristics, and contractor data. In addition, we identified several contract actions which were never reported to FPDS-NG.

Contract Value

On multiple occasions, SBA contracting personnel incorrectly reported contract values of iTechnologies contracts to FPDS-NG. For example:

- The initial value of contract SBAHQ-09-D-0009 was \$5 million; however, the value was reported to FPDS-NG as \$4.29 million, a difference of \$710,000.
- SBA misreported the value of delivery orders SBA0031, SBA0032, and SBA0033 under contract SBAHQ-09-D-0009, which were cancelled prior to award. These three delivery orders totaled approximately \$222,000.
- SBA reported a \$19,327 delivery order (SBA0016) under contract SBAHQ-10-D-0001, which was never awarded to iTechnologies.
- SBA did not report Modification numbers 5 and 6 and delivery orders SBA0020, SBA0053, and SBA0054 for contract number SBAHQ-09-D-0009. For contract SBAHQ-10-D-0001, SBA did not report delivery orders SBA0006 and SBA0008.
- SBA reported delivery order SBA010 to FPDS-NG but the delivery order number is inconsistent with SBA's delivery order numbering system and could not be identified in the contract file.

Type of Funding

We identified several instances of inaccurate reporting related to Recovery Act funding:

- Modification 3 and delivery order SBA0002, issued under contract SBAHQ-09-D-0009, were not reported to FPDS-NG as Recovery Act funded, despite contract documentation which clearly demonstrates that both contract actions were, in fact, funded by the Recovery Act.
- Delivery orders SBA0011 and SBA0012 under contract SBAHQ-10-D-0001 were inaccurately reported as Recovery Act funded within FPDS-NG. However, SBA did not use Recovery Act funds for either delivery order.

Competition Characteristics

The FPDS-NG Data Dictionary includes the field *Extent Competed*, which represents the competitive nature of the contracts. Contract actions may be classified as one of nine codes, including but not limited to: full and open competition, not available for competition, competed under Simplified Acquisition Procedures (SAP), and non-competitive delivery order (NCDO). SBA incorrectly reported numerous competition characteristics to FPDS-NG for the contracts and BPA awarded to iTechnologies.

- Seven contract actions were reported as “Competed” despite all of the contract actions being awarded on an 8(a) sole-source basis.
- In justifying the use of sole-source contracting, 60 contract actions cited “No Set Aside Used,” despite the actions being 8(a) set-asides. In addition, 2 contract actions cited “Only One Source,” despite the availability of numerous potential sources.
- Nine contract actions had incomplete competition fields.⁹
- SBA left multiple non-competition data fields incomplete.

Contractor Data

We noted that contract location could not be supported.

- According to contract documentation for SBA’s IDIQ contracts SBAHQ-09-D-0009 and SBAHQ-10-D-0001, contract work is to be performed at the contractor’s location. As the prime contractor, iTechnologies is located in Tomball, Texas. However, the majority of the delivery orders issued under these IDIQ contracts were reported to FPDS-NG as having been performed in Washington, DC.
- BPA SBAHQ-10-A-0001 states that the place of performance will be determined on the delivery order level. After reviewing each delivery order, we found that no place of performance was identified, but delivery orders SBA0001, SBA0002, SBA0003, and SBA0004 were reported in FPDS-NG as having been performed in Washington, DC and delivery order SBA0006 was reported as having been performed in Atlanta, Georgia.

Additional details on the comparison of FPDS-NG data to SBA’s iTechnologies contract files are contained in Appendix II. All of the above FPDS-NG reporting discrepancies occurred because SBA contracting personnel did not adequately review contract data before or after it was submitted to FPDS-NG. Had the contracting officer compared

⁹ The FPDS-NG Data Element Dictionary, Version 1.3, dated December 4, 2009 defines competition fields as “Extent Competed,” “Other Than Full and Open Competition,” and “Type of Set Aside.”

contract data to FPDS-NG reports, the contracting officer would have realized the FPDS-NG reporting deficiencies and should have corrected the errors.

SBA has a history of inaccurately reporting data to FPDS-NG. SBA OIG Report Number 10-08, *SBA's Efforts to Improve Acquisition Data in the Federal Procurement Data System*, reported data inaccuracy rates of 92 percent in FY 2008 and 97 percent in FY 2009. Since most of the inaccurate reporting identified within this report involved contract actions during FY 2010, it is apparent that SBA has not implemented any corrective actions to satisfy recommendations made in SBA OIG Report Number 10-08.

RECOMMENDATIONS

We recommend that the CFO:

1. Instruct the contracting officer to immediately terminate contracts SBAHQ-09-D-0009, SBAHQ-10-D-0001, and BPA SBAHQ-10-A-0001 and re-solicit the IT hardware and software requirement using full and open competition procedures.
2. Implement and provide annual training to contracting personnel on acquisition planning, the appropriate use of NAICS codes and the Non-manufacturer Rule.
3. Exclude contracts SBAHQ-09-D-0009, SBAHQ-10-D-0001, BPA SBAHQ-10-A-0001 and all associated delivery orders and BPA calls from SBA calculations used to determine the number of 8(a) program contracts and small business contracts for fiscal years 2009 and 2010.
4. Implement and provide training to contracting officers on reporting contract data to FPDS-NG on an as-needed basis.
5. Conduct a comprehensive review of data submitted to FPDS-NG for SBA contracts awarded to iTechnologies, reconcile all discrepancies identified, and correct any inaccurately reported data.
6. Hold contracting officers accountable for FPDS-NG data accuracy requirement by incorporating FPDS-NG data accuracy reporting requirements in each contracting officer's performance plan.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

On January 11, 2011, we provided a draft of this report to SBA's Office of the Chief Financial Officer (OCFO) for comment. On February 11, 2011, SBA submitted its formal comments, which are contained in their entirety in Appendix II. Management agreed with recommendation six and partially agreed with recommendations one through five. The Agency's comments and our evaluation of them are summarized below.

Management Comments

Comment 1

Management noted that the draft report was a review of contract actions that were executed prior to the Procurement Division's realignment under OCFO. Since this realignment, OCFO has taken the following steps to improve acquisition practices at SBA:

- Hiring ten new procurement staff members,
- Training procurement staff members on Small Business-Set Asides and the Non-manufacturer Rule, and
- Reinvigorating the Agency's advance acquisition strategy.

Management further stated that the OCFO will use this audit report to continue to identify priorities that must be addressed to improve Procurement Division performance.

OIG Response

We agree with management's assertion that the contract actions reviewed for this audit were executed prior to the aforementioned realignment. We also agree that OCFO has taken several appropriate steps toward improving SBA's acquisition practices and the overall performance of the Procurement Division.

Comment 2

Management did not concur with the audit team's assertion that "BPAs may not be awarded when there is an existing contract for the same supplies or service." According to OCFO, FAR 13.302-2(a)(4) states that BPAs cannot be used with *requirements* contracts. Management further stated that since the other vehicles we reviewed were IDIQ contracts rather than requirements contracts, the BPA award was appropriate.

OIG Response

The audit team found that Management incorrectly cited the FAR. The correct citation is FAR 13.303-2(a)(4), which states that "Contracting officers may establish a BPA if there is no existing requirements contract for the same supply or service that the contracting

activity is required to use.” We agree with OCFO’s interpretation of the FAR; since the additional contract vehicles were IDIQs rather than requirements, this section of the FAR did not bar SBA from issuing a BPA for the procurement of IT hardware and software. We revised the report accordingly.

Comment 3

Management also disagreed with the audit team’s assertion that SBA split the same requirement among several procurement vehicles in order to circumvent the \$3.5 million 8(a) sole-source threshold. OCFO stated that based on a lack of coordination, training, and shortfalls in the skill set of the procurement workforce at the time these vehicles were issued; it is improbable that the threshold was purposefully and willfully circumvented. Management further added that, insofar as each requirement was viewed separately, no regulation or law required that they be bundled into one overarching requirement.

OIG Response

While the procurement workforce may not have purposefully circumvented the 8(a) sole-source threshold, the requirement to procure IT hardware and software was split by OCIO among several procurement vehicles in order to circumvent the 8(a) sole-source threshold. OCIO estimated minimum costs at \$5 - \$10 million and realized that such costs would require the use of 8(a) competitive procedures. OCIO personnel stated they originally intended to procure IT hardware and software through an Alaska Native Corporation because of the unlimited sole-source threshold. In addition, OCIO used the same acquisition plan, the same statement of work, and the same CLIN list to award both IDIQ contracts and the BPA. Further, OCIO personnel informed the audit team that OCIO intended to expend the full value of IDIQ contract SBAHQ-09-D-0009 in two years rather than five. At that time, OCIO planned to issue a new contract vehicle. This evidence points to SBA purposely splitting the contract requirements in order to circumvent the \$3.5 million 8(a) sole-source threshold.

Recommendation 1

Management Comments

Management partially agreed with the recommendation. Management stated that they will not place any more orders against the contract vehicles but stated that they believe termination is unnecessary and may incur additional costs for the Agency. In addition, management did not commit to using competitive procedures for future awards.

OIG Response

We consider management comments to be partially responsive to our recommendation. The audit team found that SBA met the minimum guaranteed amount for each of the three procurement vehicles reviewed, relieving the government of its liability to the contractor. This eliminates the risk that the Agency may incur additional costs for

terminating the contracts. In addition, SBA obligations exceeded the contract value for IDIQ contract SBAHQ-09-D-0009. Further, all three of the procurement vehicles were inappropriately awarded using 8(a) sole-source procedures, despite the fact that the requirement did not qualify for 8(a) award under the Non-manufacturer Rule and the fact that, based on estimated contract costs, the award should have been awarded using competitive procedures. At a minimum, the OIG believes that SBA should solicit a new contract award using competitive procedures.

Recommendation 2

Management Comments

Management partially agreed with the recommendation. Management stated that since the Procurement Division has been realigned under OCFO, most of the procurement staff has been replaced and new staff members have received training on small business set-asides, the FAR, acquisition best practices, and the Non-manufacturer Rule. Further, management stated that contracting officers receive on-going training concerning small business issues and acquisition planning. OCFO management does not believe that annual training on the specific issues identified by the audit team is an appropriate recommendation, as none of the issues reported was the product of new staff members.

OIG Response

We consider management comments to be responsive to our recommendation and deleted “annual” from our recommendation.

Recommendation 3

Management Comments

Management partially agreed with the recommendation. Management stated that they are awaiting feedback from the Office of Management and Budget’s (OMB’s) Office of Federal Procurement Policy (OFPP) regarding prior year data in FPDS-NG. OCFO management added that the Procurement Division has discovered additional data integrity issues and that SBA is working with OFPP to develop an alternative data validation plan. Management stated that OCFO will review FPDS-NG in accordance with the new data validation plan and will make the necessary corrections.

OIG Response

We consider management comments to be responsive to our recommendation.

Recommendation 4*Management Comments*

Management partially agreed with the recommendation. Management stated that the Procurement Division will provide FPDS-NG training for new staff members this fiscal year but stated that the data entry issues identified in our report were the result of actions prior to the realignment and re-staffing of the Procurement Division. OCFO management added that the Procurement Division will continue to provide FPDS-NG training on an as-needed basis.

OIG Response

We consider management comments to be responsive to our recommendation. We amended our recommendation to state, provide training on an as-needed basis.

Recommendation 5*Management Comments*

Management partially agreed with the recommendation. Management stated that SBA is engaged in an open dialogue with OMB's OFPP regarding FPDS-NG data validation and verification issues. Further, management stated that OMB has provided an alternative data validation plan and that OCFO will review all FPDS-NG data in accordance with this plan and will make the necessary corrections.

OIG Response

Management comments appear to be responsive to our recommendation; however, we will obtain more details on the corrective actions during the audit follow-up process.

Recommendation 6*Management Comments*

Management agreed with the recommendation. Management stated that FY 2011 contracting officer performance plans will contain a sub-element regarding data integrity with a specific reference to FPDS-NG data integrity.

OIG Response

We consider management comments to be responsive to our recommendation.

ACTIONS REQUIRED

Please provide your management decision for each recommendation on the attached SBA Forms 1824, *Recommendation Action Sheet*, within 30 days from the date of this report. Your decision should identify the specific action(s) taken or planned for each recommendation and the target date(s) for completion.

We appreciate the courtesies and cooperation of the Small Business Administration during this review. If you have any questions concerning this report, please call me at (202) 205-[ex. 2] or Riccardo R. Buglisi, Director, Business Development Programs Group at (202) 205-[ex. 2]

APPENDIX I. COMPARISON OF FPDS-NG DATA TO SBA'S iTECHNOLOGIES CONTRACT FILES

Contract Actions	Procurement Identifier	Referenced Indefinite Delivery Vehicle	Date Signed	Action Obligation	Base and All Options Value	Principal Place of Performance Location Name	Extent Competed	Other Than Full and Open Competition	Type of Set Aside	Treasury Account Symbol Main Account	NAICS
SBAHQ09D0009					I				I		I
SBAHQ09D0009 Modification 1			I		I				I		I
SBAHQ09D0009 Modification 2			I		I				I		I
SBAHQ09D0009 Modification 3									I		I
SBAHQ09D0009 Modification 4					I				I		I
SBAHQ09D0009 Modification 5	B	B	B	B	B	B	B	B	B	B	B
SBAHQ09D0009 Modification 6	B	B	B	B	B	B	B	B	B	B	B
SBAHQ09D0009 SBA0001			I					B	I	B	I
SBAHQ09D0009 SBA0002			I			I		B	I	I	I
SBAHQ09D0009 SBA0003									I	B	I
SBAHQ09D0009 SBA0004									I	B	I
SBAHQ09D0009 SBA0005				I		I			I	B	I
SBAHQ09D0009 SBA0006						I			I	B	I
SBAHQ09D0009 SBA0007						I			I	B	I
SBAHQ09D0009 SBA0008			I	I	I	I			I	B	I
SBAHQ09D0009 SBA0009			I			I			I	B	I
SBAHQ09D0009 SBA0010			I			I			I	B	I
SBAHQ09D0009 SBA0011						I			I	B	I

[illegible]

APPENDIX I. COMPARISON OF FPDS-NG DATA TO SBA'S iTECHNOLOGIES CONTRACT FILES (continued)

Contract Actions	Procurement Identifier	Referenced Indefinite Delivery Vehicle	Date Signed	Action Obligation	Base and All Options Value	Principal Place of Performance Location Name	Extent Competed	Other Than Full and Open Competition	Type of Set Aside	Treasury Account Symbol Main Account	NAICS
SBAHQ09D0009 SBA0032	I	I	I	I	I	I	I	I	I	I	I
SBAHQ09D0009 SBA0033	I	I	I	I	I	I	I	I	I	I	I
SBAHQ09D0009 SBA0034						I			I		I
SBAHQ09D0009 SBA0035			I			I			I		I
SBAHQ09D0009 SBA0036			I			I			I		I
SBAHQ09D0009 SBA0037			I			I			I		I
SBAHQ09D0009 SBA0042						I			I		I
SBAHQ09D0009 SBA0043						I			I		I
SBAHQ09D0009 SBA0044						I			I		I
SBAHQ09D0009 SBA0045						I			I		I
SBAHQ09D0009 SBA010	I	I	I	I	I	I	I	I	I	I	I
SBAHQ09D0009 SBA0046						I			I		I
SBAHQ09D0009 SBA0047						I			I		I
SBAHQ09D0009 SBA0048						I			I		I
SBAHQ09D0009 SBA0049						I			I		I
SBAHQ09D0009 SBA0050						I			I		I
SBAHQ09D0009 SBA0051						I			I		I
SBAHQ09D0009 SBA0052						I			I		I

[illegible]

APPENDIX I. COMPARISON OF FPDS-NG DATA TO SBA'S iTECHNOLOGIES CONTRACT FILES (continued)

Contract Actions	Procurement Identifier	Referenced Indefinite Delivery Vehicle	Date Signed	Action Obligation	Base and All Options Value	Principal Place of Performance Location Name	Extent Competed	Other Than Full and Open Competition	Type of Set Aside	Treasury Account Symbol Main Account	NAICS
SBAHQ10D0001 SBA0009							I				I
SBAHQ10D0001 SBA0010							I				I
SBAHQ10D0001 SBA0011							I			I	I
SBAHQ10D0001 SBA0012							I			I	I
SBAHQ10D0001 SBA0013							I				I
SBAHQ10D0001 SBA0014			I			I	I				I
SBAHQ10D0001 SBA0015			I			I	I				I
SBAHQ10D0001 SBA0016	I	I	I	I	I	I	I	I	I	I	I
SBAHQ10D0001 SBA0017			B			I	I				I
SBAHQ10D0001 SBA0017, Mod 1			B			I	I				I
SBAHQ10D0001 SBA0018			B			I	I				I
SBAHQ10D0001 SBA0018, Mod 1			B			I	I				I
SBAHQ10D0001 SBA0019							I				I
SBAHQ10D0001 SBA0020			B			I	I				I
SBAHQ10D0001 SBA0020, Mod 1			B			I	I				I
SBAHQ10D0001 SBA0021			I			I	I				I
SBAHQ10D0001 SBA0022			I			I	I				I
SBAHQ10D0001 SBA0023						I	I				I

APPENDIX I. COMPARISON OF FPDS-NG DATA TO SBA'S iTECHNOLOGIES CONTRACT FILES (continued)

Contract Actions	Procurement Identifier	Referenced Indefinite Delivery Vehicle	Date Signed	Action Obligation	Base and All Options Value	Principal Place of Performance Location Name	Extent Competed	Other Than Full and Open Competition	Type of Set Aside	Treasury Account Symbol Main Account	NAICS
SBAHQ10D0001 SBA0024						I	I				I
SBAHQ10D0001 SBA0025						I	I				I
SBAHQ10D0001 SBA0026						I	I				I
SBAHQ10D0001 SBA0027						I	I				I
SBAHQ10D0001 SBA0028						I	I				I
SBAHQ10D0001 SBA0029			I			I	I				I
SBAHQ10D0001 SBA0030			I			I	I				I
SBAHQ10D0001 SBA0031			I			I	I				I
SBAHQ10D0001 SBA0032			I			I	I				I
SBAHQ10D0001 SBA0033			I			I	I				I
SBAHQ10D0001 SBA0034						I	I				I
SBAHQ10D0001 SBA0035			I			I	I				I
SBAHQ10D0001 SBA0036			I			I	I				I
SBAHQ10D0001 SBA0037						I	I				I
SBAHQ10D0001 SBA0038			I			I	I				I
SBAHQ10D0001 SBA0039						I	I				I
SBAHQ10D0001 SBA0040						I	I				I
SBAHQ10D0001 SBA0041						I	I				I

APPENDIX I. COMPARISON OF FPDS-NG DATA TO SBA'S iTECHNOLOGIES CONTRACT FILES (continued)

I = Inaccurate B = Blank											
Contract Actions	Procurement Identifier	Referenced Indefinite Delivery Vehicle	Date Signed	Action Obligation	Base and All Options Value	Principal Place of Performance Location Name	Extent Competed	Other Than Full and Open Competition	Type of Set Aside	Treasury Account Symbol Main Account	NAICS
SBAHQ10D0001 SBA0042			I			I	I				I
SBAHQ10D0001 SBA0043						I	I				I
SBAHQ10D0001 SBA0044			I			I	I				I
SBAHQ10D0001 SBA0045			I			I	I				I
SBAHQ10D0001 SBA0046						I	I				I
SBAHQ10D0001 SBA0047						I	I				I
SBAHQ10D0001 SBA0048						I	I				I
SBAHQ10D0001 SBA0049						I	I				I
SBAHQ10M0111	I	I	I	I	I	I	I	B	I	B	I
SBAHQ10M0118		B					I	B	I		B
SBAHQ10M0119		B					I	B	I		I
SBAHQ10M0130		B					I	B	I		I
SBAHQ10M0135		B					I	B	I		I

APPENDIX II. AGENCY COMMENTS



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

To: Peter L. McClintock
Deputy Inspector General

From: Jon I. Carver [FOIA ex. 6]
Chief Financial Officer

Date: February 7, 2011

Re: Response to Draft Report, SBA's Procurement of Information Technology
Hardware and Software through Isika Technologies, Inc.

We appreciate the opportunity to review your draft audit entitled "SBA's Procurement of Information Technology Hardware and Software through Isika Technologies, Inc." The Office of the Chief Financial Officer (OCFO) has reviewed the findings and recommendations of Project 10018 and is providing a written response to your report.

It is important to note this report reviews contracting actions taken prior to the realignment of the Procurement Division under the OCFO. Since this reorganization the OCFO has taken a number of steps to improve acquisition business practices at the SBA including:

- hiring 10 new procurement staff members,
- training procurement staff members on Small Business Set-Asides and Non-Manufacturers Rule, and
- reinvigorating the agency's advanced acquisition strategy.

The OCFO will use this audit report to continue to identify priorities that need to be addressed to create a high performing Procurement Division.

While the OCFO concurs in part with the recommendations, it does not concur with the assertion made on page 3 that "BPAs may not be awarded when there is an existing contract for the same supplies or service." Pursuant to Federal Acquisition Regulation (FAR) 13.302-2 (a) (4), BPAs cannot be used with *requirements* contracts. The contract discussed in this report is identified as an Indefinite Delivery Indefinite Quantity (IDIQ) contract. Pursuant to 48 FAR 16.501-2 (a), a requirements contract is a type of Indefinite Delivery contract but is a distinct type of contract that is separate from an IDIQ contract.

The OCFO also disagrees with the characterization of splitting the requirement addressed on page 7 of this report. The report consistently references and details the lack of Agency advance planning and coordination of acquisitions. Based on lack of coordination, training and potential skill set shortfalls of the workforce during this period, as identified by the Office of the Inspector General (OIG), it is improbable there was a willful,

SBA IS AN EQUAL OPPORTUNITY EMPLOYER AND PROVIDER



APPENDIX II. AGENCY COMMENTS (continued)

planned attempt to circumvent the threshold. Moreover, to the extent the Agency viewed each requirement as a separate requirement, no law or regulation compelled the Agency to bundle separate requirements into a larger requirement in order to meet the 8(a) competitive threshold.

Recommendations and Responses

In addition to these general comments above the OCFO has prepared responses to the six recommendations made in the report.

- 1. Instruct the contracting officer to immediately terminate contracts SBAHQ-09-D-0009, SBAHQ-10-D-0001, and BPA SBAHQ-10-A-0001 and re-solicit the IT hardware and software requirement using full and open competition procedures.**

Concur in Part-We will not place any more orders under these acquisitions. As these are task or deliver order contracts, or in some cases, blanket purchase agreements which are not contracts, termination is unnecessary and could result in the Agency incurring additional costs. To the extent we acquire information technology goods and services, we will do so in accordance with applicable laws and regulations.

- 2. Implement and provide annual training to contracting personnel on acquisition planning, the appropriate use of NAICS codes and the non-manufacturer rule.**

Concur in Part - Since this reorganization of the Procurement Division into the OCFO most of the staff has been replaced and there have been training sessions on small business set asides, the FAR, and acquisition best practices. Specific training on the Non-Manufacturer Rule was conducted by the Office of General Counsel on February 3, 2011. Contracting Officers receive on-going training, which includes training concerning small business issues and acquisition planning. A requirement of annual training on these specific issues is not an appropriate recommendation since none of the reported issues were the product of any of the new staff, which has been hired since October 1, 2010.

- 3. Exclude contracts SBAHQ-09-D-0009, SBAHQ-10-D-0001, BPA SBAHQ-10-A-0001 and all associated delivery orders and BPA calls from SBA calculations used to determine the number of 8(a) program contracts and small business contracts for fiscal years 2009 and 2010.**

Concur in Part-Pending feedback from the Office of Management and Budget's (OMB's) Office of Federal Procurement Policy (OFPP) regarding prior year data in Federal Procurement Data System (FPDS-NG). In addition to other OIG

APPENDIX II. AGENCY COMMENTS (continued)

reports regarding data issues for FY08, FY09 and the referenced issues in this report for FY09 and FY10, the Procurement Division have discovered other data integrity issues. SBA is working with OFPP to develop an alternative data validation plan that meets OMB and FAR requirements, while taking into account SBA's resources and workload. The OCFO will review all FPDS data in accordance with this plan and will make the necessary corrections.

4. Implement and provide annual training to contracting officers on reporting contract data to FPDS-NG.

Concur in Part—While the Procurement Division will provide FPDS-NG training for the new staff this fiscal year, the data entry issues identified in this report are a result of contracting actions made prior to the reorganization and staffing of the Procurement Division. The Procurement Division will continue to provide FPDS training on an as needed basis.

5. Conduct a comprehensive review of data submitted to FPDS-NG for SBA contracts awarded to iTechnologies, reconcile all discrepancies identified, and correct any inaccurately reported data.

Concur in Part- SBA is engaged in open dialogue with OMB's OFPP regarding our plan to FPDS-NG verification and validation issues. After reviewing past SBA reports, the SBA's FY2011 data quality plan, and learning of our recent organizational change, OMB has provided SBA with an alternative data validation plan, which meets the OMB and FAR requirements, while taking SBA's resources and workload into consideration. The OCFO will review all FPDS data in accordance with this plan and will make the necessary corrections.

6. Hold contracting officers accountable for FPDS-NG data accuracy requirement by incorporating FPDS-NG data accuracy reporting requirements in each contracting officer's performance plan.

Concur with comment. FY11 performance plans will contain a sub-element regarding data integrity with a specific reference to data integrity for FPDS-NG.

Thank you for the opportunity to provide comments on this draft report. Our office looks forward to working with you as we complete the transition of the Procurement Division. If you have any question please contact Bill Cody at (303) 844- [FOIA ex. 2]

Sincerely,

Jon I. Carver
Chief Financial Officer