

**SMALL BUSINESS ADMINISTRATION'S FUNDING OF
INFORMATION TECHNOLOGY CONTRACTS AWARDED TO
ISIKA TECHNOLOGIES, INC.**

Report Number: 11-14
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U.S. Small Business Administration
Office of Inspector General

Memorandum

To: Jonathan I. Carver
Chief Financial Officer

Date: June 2, 2011

From: John K. Needham /s/
Assistant Inspector General for Auditing

Subject: Small Business Administration's Funding of Information Technology Contracts Awarded to Isika Technologies, Inc., Report No. 11-14

This report presents the results of our audit of the Small Business Administration's (SBA's) funding of information technology (IT) hardware and software contracts awarded to Isika Technologies, Incorporated (iTechnologies). This is the second in a series of audit reports related to our ongoing audit of IT contracts awarded to iTechnologies. Our first report addressed the planning and award of contracts to iTechnologies for the procurement of IT hardware and software.¹ The objective of this audit was to determine whether SBA officials properly funded contracts awarded to iTechnologies for the procurement of IT hardware and software.

To achieve the audit objective, we reviewed pertinent Code of Federal Regulations (CFR), Federal Acquisition Regulations (FAR), the U.S. Government Accountability Office (GAO) Principles of Federal Appropriations Law (Red Book), and SBA's iTechnologies contract files. We also interviewed personnel from SBA's Office of the Chief Information Officer (OCIO) and the Office of the Chief Financial Officer (OCFO). In addition, on February 25, 2011, we referred details of Indefinite Delivery/Indefinite Quantity (IDIQ) contract SBAHQ-09-D-0009 to the GAO for a decision on whether the SBA violated principles of appropriations law. As of the date of this report, GAO had not issued a decision. We conducted our review between January and March 2011 in accordance with *Government Auditing Standards* prescribed by the Comptroller General of the United States.

BACKGROUND

Contracts Awarded to iTechnologies. During fiscal year (FY) 2009 and FY 2010, the SBA awarded two IDIQ contracts, a Blanket Purchase Agreement (BPA), and five purchase order contracts totaling nearly \$7,600,000 to iTechnologies for the procurement of IT hardware and software, as follows in Table 1:

¹ OIG Report Number 11-08, *SBA's Procurement of Information Technology Hardware and Software through Isika Technologies Inc.*, February 25, 2011.

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 |
| 2/18/2010 | 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 |
| TOTAL: | | | \$ 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 contract establishes a minimum quantity or value 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 contract to purchase supplies and services that fulfill the government's needs.

Appropriating and Obligating Federal Funds. Congress appropriates funds to Federal agencies to carry out their mission. Funds are only available to meet a legitimate or bona fide need arising in the specified period for which the appropriation was made. This concept is known as the bona fide needs rule. Most funds discussed in this report were annual funds; therefore, they were available only during FY 2009 and FY 2010, respectively. After September 30 of each respective year, the annual appropriations expired and were no longer available for incurring and recording new obligations.

In terms of appropriation law and its use in this report, an appropriation is available for use based on the concept of "obligating" the government. An agency must record an "obligation" against an appropriation at the time it incurs a legal liability for payment. An agency can incur a legal liability, that is, a claim that may be legally enforced against the government, by signing a contract. When an agency executes an indefinite-quantity contract such as an IDIQ contract, the agency must record an "obligation" in the amount of the required minimum purchase. At the time of award, the government has a fixed liability for the minimum amount to which it has committed. Additional obligations occur as task or delivery orders are issued and are charged to the fiscal year in which the order is placed. Thus, in the case of an IDIQ contract, the government incurs a legal liability in the amount of the guaranteed minimum at the time of contract award.

An inappropriate obligation of funds arises when an agency obligates fixed-period funds on a contract in an attempt to both extend the life of those funds beyond their availability and to circumvent appropriations law. Inappropriately obligated funds are then used to procure goods or services in a subsequent fiscal year in the mistaken belief that the funds are no longer subject to the appropriation's expiration and remain available indefinitely. As a result, agencies risk violating the Anti-Deficiency Act (ADA), which prohibits

agencies from making or authorizing an expenditure or obligation under an appropriation or fund in excess of the amount available. Insofar as annual funds expire at the end of the applicable fiscal year, they are no longer available for incurring and recording new obligations. Use of these expired funds may violate the ADA if an agency does not have access to available funds to cover these inappropriate obligations.

The GAO is an independent, nonpartisan legislative branch agency that among other things, maintains the publication, *Principles of Federal Appropriations Law*, also known as the Red Book, which presents a basic reference work summarizing the Comptroller General's decisions that clarify established federal fiscal laws. The Red Book was used as a reference during this review.

RESULTS IN BRIEF

Contracting and OCIO personnel did not properly fund IDIQ contract SBAHQ-09-D-0009 because they obligated \$3.151 million² during FY 2009 and FY 2010 by issuing contract modifications without identifying specific requirements for IT hardware and software. Because the SBA did not use these obligated annual funds to purchase IT hardware or software during FY 2009 and FY 2010, we determined that the SBA was inappropriately obligating annual funds that otherwise would not have been available for use in a subsequent fiscal year. According to SBA personnel, this occurred because contracting officers did not review contract modification details prior to issuance and cited fiscal year-end constraints as the rationale for not performing a review³. As a result, the SBA: 1) violated the bona fide needs rule relating to its FY 2009 and FY 2010 annual appropriations; 2) risked violating the ADA by obligating expired FY 2010 annual funds during FY 2011 with no assurance that the agency had funds available to cover these inappropriate expenditures; and 3) reported the inappropriate obligation of funds to the Federal Procurement Data System – Next Generation (FPDS-NG), which resulted in an overstatement of obligations to Small Disadvantaged Businesses (SDBs) in the FY 2009 Small Business Goaling Report and may also lead to incorrect SDB reporting in the FY 2010 Small Business Goaling Report. We did not identify any material funding issues for the IDIQ contract⁴, the BPA⁵, or the five purchase orders⁶ awarded during FY 2010.

To address the funding issues identified in our audit, we recommended that the Chief Financial Officer (CFO) establish procedures to discontinue the SBA's practice of inappropriately obligating funds on contracts in anticipation of future needs, de-obligate inappropriately obligated funds, and develop and provide training to OCIO and contracting personnel on the bona fide needs rule. We also recommended that the CFO

² \$266,000 and \$1,025,000 in FY 2009 annual funds and \$235,000, \$45,000, and \$1,580,000 in FY 2010 annual funds. See Appendix A and B.

³ FAR Subpart 1.602, "Contracting Officers," states that 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 and that sufficient funds are available for obligation.

⁴ SBAHQ-10-D-0001

⁵ SBAHQ-10-A-0001

⁶ SBAHQ-10-M-0111; SBAHQ-10-M-0118; SBAHQ-10-M-0119; SBAHQ-10-M-0130; and SBAHQ-10-M-0135.

determine whether the SBA violated the ADA and take appropriate action if a violation exists, review all ongoing SBA IDIQ contracts to ensure that task orders are being issued in accordance with FAR Subpart 16.505, and based on the IDIQ contracts review results, determine whether administrative actions are warranted against the contracting officers. Finally, we recommended that the CFO revise FPDS-NG data for contract SBAHQ-09-D-0009 to ensure that inappropriately obligated funds are not included in the FY 2010 Small Business Goaling Report.

Management neither concurred nor non-concurred with the recommendations. However, management stated in their comments that actions were generally underway or improvements had already been made to address the deficiencies noted in the audit. Therefore, we consider management's comments to be responsive to five of the recommendations, partially responsive to one of the recommendations, and non-responsive to one of the recommendations.

RESULTS

SBA Obligated Funds Without Identifying a Bona Fide Need

On September 21, 2009, the SBA awarded IDIQ contract SBAHQ-09-D-0009⁷ to iTechnologies for the procurement of IT hardware and software. The contract included a minimum guaranteed amount of \$290,000 and a contract ceiling of \$5 million. At the time the contract was awarded, the SBA obligated \$290,000⁸ of FY 2009 funds to meet the minimum guaranteed amount, as required by the FAR.

However, the SBA did not identify a bona fide need to procure specific IT hardware and software items in conjunction with the obligation of these FY 2009 annual funds. Further, the SBA issued modifications 0001, 0004, 0005, and 0006, which obligated a total of \$2,885,000 in FY 2009 and FY 2010 annual funds to the contract without identifying a specific need for IT hardware and software. Instead, the Agency identified specific needs for IT hardware and software at the task order level in subsequent fiscal years.

SBA Inappropriately Obligated Funds to Extend Appropriations Beyond Availability

At the end of FY 2009 and FY 2010, the SBA inappropriately obligated annual funds on IDIQ contract SBAHQ-09-D-0009 in an attempt to extend the available life of funds by circumventing appropriations law. When the contract was awarded on September 21, 2009, the SBA obligated the minimum guaranteed amount using FY 2009 funds. Of the \$290,000 that was obligated, \$266,000 was FY 2009 annual funds

⁷ SBAHQ-09-D-0009 is an IDIQ contract comprised of a base year beginning on September 21, 2009, and four 1 year options beginning approximately on September 21 of 2010, 2011, 2012, and 2013.

⁸ SBAHQ-09-D-0009 initial funding included an additional \$24,000 of no-year funding for a total obligation of \$290,000 (\$266,000 annual funds + \$24,000 no-year funds). We are not questioning the obligation of \$24,000 because those funds did not expire.

and \$24,000 was FY 2009 no-year funds⁹. One week later, on September 28, 2009, the SBA unilaterally modified the contract to increase the minimum guaranteed amount by \$1,025,000, obligating additional FY 2009 annual funds. Since a minimum had already been established for this contract and no other contract terms were changed, the SBA received no benefit by increasing the minimum guaranteed amount.

Federal funds are made available to agencies through appropriations acts and the subsequent administrative actions that release appropriations for obligation and expenditure. Unless otherwise stated in an appropriations act, all appropriations are presumed to be annual and may only be obligated within the fiscal year¹⁰ for which they were appropriated. Further, the obligation must be for the needs of the current fiscal year, rather than the needs of a future fiscal year.¹¹

According to SBA contracting personnel, annual funds were obligated on the IDIQ at the end of their respective fiscal years to extend the life of the appropriations. Contracting personnel further stated that once funds were obligated to an IDIQ contract, those funds were available over the life of the contract and did not expire until the contract was terminated. However, this assumption is false. Funds obligated to IDIQ contract SBAHQ-09-D-0009 in FY 2009 were annual funds¹² and therefore, were available only for procurements that met the bona fide needs rule on task orders issued between September 21 and September 30, 2009. During this period, no task orders were awarded and the SBA did not procure any IT hardware and software until FY 2010. As a result, all FY 2009 annual funds obligated to meet the minimum guaranteed amount expired on October 1, 2009.

Between September 21 and September 30, 2009, the SBA obligated \$1,291,000 in FY 2009 annual funds to IDIQ contract SBAHQ-09-D-0009. The Agency inappropriately obligated these annual funds in FY 2009¹³, but waited until FY 2010 to use the funds to issue task orders to procure IT hardware and software. The OCIO established a self-described “draw down” spreadsheet to track the use of expired FY 2009 annual funds as they were used to issue task orders in the subsequent fiscal year. As the OCIO identified specific goods to procure, funds were liquidated or “drawn down” as task orders were issued for contract SBAHQ-09-D-0009. The “draw down” account constituted a second use of the same expired appropriation, an inappropriate practice of fiscal law. In addition, since FY 2009 annual funds expired on September 30, 2009, task orders issued throughout FY 2010 should have been funded using FY 2010 appropriations. However, during FY 2010, the SBA inappropriately issued 27 task orders valued at \$1,109,900 using previously obligated and expired FY 2009 annual funds. Appendix A identifies the inappropriately obligated FY 2009 annual funds and the associated task orders issued against those expired funds.

⁹ A no-year appropriation is available for obligation without fiscal year limitation.

¹⁰ The Federal Government fiscal year runs from October 1 to September 30.

¹¹ 31 U.S.C. 1502(a)

¹² Of \$1,315,000 obligated on IDIQ contract SBAHQ-09-D-0009, \$1,291,000 was FY 2009 annual funds and \$24,000 was no-year funds.

¹³ We are not questioning the obligation of \$24,000 for the original minimum guaranteed amount.

Between September 9, 2010 and September 24, 2010, the SBA repeated the practice of inappropriately obligating funds by issuing three contract modifications¹⁴ that obligated \$1,860,000 in FY 2010 annual funds but did not identify a need to procure IT hardware or software. SBA personnel stated that the purpose of obligating these FY 2010 annual funds was to provide funding for task orders issued at the beginning of FY 2011, since funds are not normally available at the beginning of a fiscal year. Under the FY 2011 Continuing Resolution (CR),¹⁵ the SBA issued eight task orders valued at \$245,313 using previously obligated FY 2010 annual funds. However, these FY 2010 annual funds expired on September 30, 2010 and therefore, were not available for use in FY 2011. Appendix B identifies the inappropriately obligated FY 2010 annual funds and the associated task orders issued against those expired funds.

SBA Potentially Violated the Anti-Deficiency Act

The ADA prohibits government officials from making or authorizing an expenditure or obligation under an appropriation or fund in excess of the amount available. Since October 1, 2010, the SBA has issued eight task orders valued at \$245,313 using expired FY 2010 annual funds. The Federal government operated under a CR until April 8, 2011, when Congress finalized the FY 2011 budget. The CR authorized government agencies to continue operations at current or reduced funding levels. Since the SBA had not received full funding and did not know how much funding it would receive for FY 2011, it was possible that the Agency would not have had sufficient funds to cover the inappropriate expenditure of FY 2010 annual funds during FY 2011, as required by the ADA.

SBA's Annual Goaling Report

In FY 2009, the SBA reported the original \$290,000 obligation on IDIQ contract SBAHQ-09-D-0009 to the FPDS-NG. This obligation was included in the FY 2009 Small Business Goaling Report. The Small Business Act requires that the President establish annual government-wide goals for Federal procurement contracts awarded to small business concerns at not less than 23 percent of the total value of all prime contract awards for each fiscal year. The SBA prepares the annual Small Business Goaling Report to measure each agency's performance against small business goals. Each year, the Small Business Goaling Report is provided to the President and Congress. The SBA's practice of inappropriately obligating funds on a contract without a specific bona fide need contributed to inaccuracies in the FY 2009 Small Business Goaling Report. Specifically, the \$290,000 reported in the FY 2009 Small Business Goaling Report was not used to procure IT hardware and software under IDIQ contract SBAHQ-09-D-0009 during FY 2009. The practice of inappropriately obligating funds resulted in the SBA claiming an SDB purchase of \$290,000 for obligations that were not used to procure IT hardware and software. As a result, the SBA recorded a purchase

¹⁴ SBAHQ-09-D-0009 Modification 0004 valued at \$235,000; Modification 0005 valued at \$45,000; Modification 0006 valued at \$1,580,000.

¹⁵ Public Law 111-242, "Continuing Appropriations Act, 2011"

from an SDB in FY 2009; however, the SBA did not identify a specific bona fide need, the SDB performed no work, and the Agency received no goods or services in FY 2009.

Reports for FY 2010 from FPDS-NG for IDIQ contract SBAHQ-09-D-0009 included obligations made during FY 2009 and FY 2010, totaling \$2,885,000 in inappropriately obligated funds. These reports included a contract modification that inappropriately obligated \$1,025,000 in FY 2009 annual funds and four contract modifications that inappropriately obligated an additional \$1,860,000 in FY 2010 annual funds. These inappropriately obligated funds expired at the end of their respective fiscal years. In addition to the inappropriately obligated FY 2009 and FY 2010 annual funds reported to FPDS-NG during FY 2010, the SBA reported, for a second time, obligations for purchases of IT hardware and software through a series of task orders issued in FY 2010 and FY 2011 using previously obligated and expired FY 2009 and FY 2010 annual funds totaling \$1,355,213.¹⁶ Since the FY 2010 Small Business Goaling Report has yet to be issued, the SBA should exclude the inappropriately obligated funds to avoid double counting. Without corrective action prior to issuance of the FY 2010 Small Business Goaling Report, the SBA will overstate contract awards to SDB's by \$2,885,000. Appendices A and B identify the inappropriately obligated funds and the task orders issued against those expired funds.

RECOMMENDATIONS

We recommend that the Chief Financial Officer:

1. Establish procedures to discontinue the SBA's practice of inappropriately obligating funds on contracts in anticipation of future needs.
2. Direct the contracting officer to de-obligate inappropriately obligated funds on contract SBAHQ-09-D-0009.
3. Develop and provide training to OCIO, current contracting personnel and newly hired staff regarding the establishment of a bona fide need.
4. Determine whether the SBA violated the Anti-Deficiency Act under the FY 2011 continuing resolution and take action consistent with the Anti-Deficiency Act if the SBA determines there is a violation.
5. Review all ongoing SBA indefinite delivery/indefinite quantity contracts as part of good financial management practices to ensure that task orders are being issued in accordance with Federal Acquisition Regulation, Subpart 16.505 and not as a tool to inappropriately obligate funds.
6. Based on the review of all ongoing SBA indefinite delivery/indefinite quantity contracts, determine whether contracting officers violated FAR Subpart 1.602, "Contracting Officers", and if so, take appropriate administrative actions.

¹⁶ \$1,109,900 in FY 2009 annual fund "draw downs" and \$245,313 in FY 2010 annual fund "draw downs".

7. Revise FY 2009 and FY 2010 FPDS-NG data for contract SBAHQ-09-D-0009 to ensure that inappropriately obligated funds are not included in the FY 2010 Small Business Goaling Report.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

On March 25, 2011, we provided a draft of this report to SBA's OCFO for comment. On May 24, 2011, OCFO submitted formal comments, which are contained in their entirety in Appendix C. Management did not state whether it concurred or non-concurred with the recommendations. Because some actions were either underway or improvements had already been made to address the deficiencies noted in the audit, we consider management's comments to be responsive to five of the recommendations, partially responsive to one of the recommendations, and non-responsive to one of the recommendations. A summary of management's comments and our response follows.

Management Comments

Comment 1

Management stated that it believes the contracts awarded to iTechnologies were properly structured but that "the timing of the task orders did not result in proper contract utilization and obligation." The OCFO also stated that the contracts were for both supplies and services. They explained the difference between severable and non-severable services and implied that the contracts awarded to iTechnologies could have been for severable services. The OCFO further explained that contracts for severable services may cross fiscal years while being funded entirely with funds from the first fiscal year. However, management clarified that there was no evidence that services had been procured under these contracts.

OIG Response

We disagree with management's assertion that the IT hardware and software contracts awarded to iTechnologies were for both supplies and services. While the Scope of Objectives (SOO) did state that the SBA sought to obtain IT hardware, software, and related services, no documentation was provided to identify the services that would be performed under the IT hardware and software contracts awarded to iTechnologies. Specifically, the acquisition plan, SOO, iTechnologies' response to the SOO, and IDIQ contract SBAHQ-09-D-0009 do not identify any services to be performed by iTechnologies. The fact that this was a contract for supplies rather than services is demonstrated by OCFO's comment that they could "find no evidence that any services were purchased under the [iTechnologies] contract." Simply adding the words "related services" to the SOO and contract does not transform a supplies contract into a services contract.

Comment 2

Management stated that the agency must adhere to the bona fide needs rule when procuring supplies and explained that the bona fide needs rule prohibits the use of

appropriated funds to procure items for a different fiscal year. The OCFO stated that there are two exceptions to the bona fide needs rule, including: (1) stock-level or inventory exception; and (2) lead-time exception. In addition, management asserted that the inventory exception applied because the OCIO created a list of supplies needed by the end of the fiscal year.

OIG Response

The audit team maintains its position that the SBA violated the bona fide needs rule. Neither the contract file nor SBA personnel, including OCIO personnel, had evidence to support the argument that the SBA had a bona fide need in FY 2009 to procure IT hardware or software through iTechnologies. IDIQ contract SBAHQ-09-D-0009 incorporated a generic supply list, which documented 307 contract line items available for order by the SBA over the life of the contract. This generic list of supplies did not establish quantities to be procured or reflect historical usage rates. In addition, no documentation was presented to indicate that the SBA knew what IT hardware and software they needed. Further, the contract does not adequately demonstrate the SBA's intent to order any or all of the items available under the contract in FY 2009. Lastly, since the SBA did not establish quantities or products it required at the end of FY 2009 and FY 2010, the SBA obligated funds in anticipation of future needs.

Recommendation 1

Management Comments

Management stated that it recognizes the importance of properly obligating Federal funds on SBA contracts. The OCFO's comments also discussed various policies and regulations, including SOP 00 11 1, "Small Purchases, Contracts, Grants and Cooperative Agreements." Management explained that the OCFO is updating SOP 00 11 1 and is re-drafting an internal controls SOP to reinforce sound procurement and obligation procedures. Further, management indicated that the OCFO takes its responsibility to prevent the inappropriate obligation of funds on contracts in anticipation of future needs very seriously.

OIG Response

We consider management comments to be responsive to our recommendation. However, we stress the importance of ensuring that SOP 00 11 1 and the new internal controls SOP are formalized in a timely manner.

Recommendation 2

Management Comments

Management stated that the OCFO took corrective action by making appropriation account adjustments. The OCFO explained that these adjustments ensured that

appropriated funds were used only to pay for equipment and materials procured during the associated fiscal year; thus, items procured in FY 2010 were purchased using FY 2010 annual funds and items purchased in FY 2011 were purchased using FY 2011 annual funds.

OIG Response

We consider management comments to be responsive to our recommendation.

Recommendation 3

Management Comments

Management stated that the OCFO is responsible for carrying out the Agency's Senior Procurement Executive (SPE) and Chief Acquisition Officer (CAO) duties. The OCFO explained that CAO responsibilities include developing and maintaining the acquisition career management program, as well as developing strategies and planning for the hiring, training, and professional development of acquisition personnel. Management comments emphasized that the Agency is following guidance on training and that the SBA provided agency-wide COTR training, which covered the bona fide needs rule.

OIG Response

We consider management comments to be partially responsive to our recommendation. While we agree with management's decision to provide training to acquisition personnel, management's response did not specify what that training was or that it would also be provided to OCIO personnel. We emphasize that Recommendation 3 states that the CFO should develop and provide training to OCIO, current contracting personnel, and newly hired staff regarding the establishment of a bona fide need.

Recommendation 4

Management Comments

Management stated that there were two ways to view the ADA in this situation: first, SBA may have violated the bona fide needs rule, but has since cured the violation. The OCFO explained that the SBA cured any potential violation of the ADA, with regard to bona fide need, by making adjustments to its appropriation accounts. This added sufficient unobligated funds to cover the cost of all supplies ordered under IDIQ contract SBAHQ-09-D-0009. Second, management stated that it was possible that the SBA violated the ADA by obligating funds in advance of the FY 2010 appropriation. The OCFO explained that such a violation would not be subject to cure because there were no FY 2010 funds available in September 2009 to meet the bona fide needs of FY 2010. Therefore, this potential violation would be subject to reporting under the *Principles of Federal Appropriations Law*. Management explained that OMB Circular No. A-11, "Preparation, Submission, and Execution of the Budget" provides instructions on

reporting potential ADA violations. Further, the OCFO stated that they are in the process of reporting this potential ADA violation in accordance with OMB Circular No. A-11.
OIG Response

We consider management comments to be responsive to our recommendation.

Recommendation 5

Management Comments

Management stated that the Acquisition Division of the OCFO reviews all contracts, including IDIQ contracts, in accordance with Government-wide and SBA-specific guidance. Management emphasized they will comply with FAR Subpart 16.505.

OIG Response

We consider management comments to be responsive to our recommendation.

Recommendation 6

Management Comments

Management stated that SBA's contracting program complies with FAR, Subpart 1.6, "Career Development, Contracting Authority, and Responsibilities," and added that the OCFO would continue its investigation into this situation. Management confirmed that, if warranted, administrative action would be taken.

OIG Response

We consider management comments to be responsive to our recommendation.

Recommendation 7

Management Comments

Management stated that the SBA is responsible for the Annual Small Business Goaling Report and explained that the report is used to determine whether each Federal agency is meeting its goal for making contract awards to small businesses. Management emphasized that FPDS-NG data fluctuates throughout the year but the Annual Small Business Goaling Report is based upon a snapshot of FPDS-NG data taken on a certain date. Due to the constant data fluctuation, management stated that revising the FY 2009 and FY 2010 data in FPDS-NG would be "inefficient and uneconomical." Therefore, the OCFO decided not to correct prior FPDS-NG data, but will ensure the accuracy of data reporting to FPDS-NG in the future. Further, management stated that the SBA is developing an alternative data validation plan and intends to hire an internal verification and validation contractor.

OIG Response

We consider management's comments to be non-responsive to our recommendation. While we acknowledge management's effort for taking actions to ensure the accuracy of SBA's future data in FPDS-NG and the hiring of a new internal verification and validation contractor, management's comments disregarded the audit recommendation to revise the inappropriate obligations the SBA reported to FPDS-NG for FY 2009 and FY 2010. Based on management's comments, it appears that the Agency intends to knowingly issue the Annual Small Business Goaling Report for FY 2010 with inaccurate information. By ignoring the data inaccuracies for FY 2009 and FY 2010, the SBA is perpetuating its practice of double counting obligations to SDBs within the Annual Small Business Goaling Report. Further, as the Agency responsible for the Annual Small Business Goaling Report, the SBA is setting an example that data accuracy is irrelevant, which diminishes the significance and accuracy of the Annual Small Business Goaling Report.

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) 205-7390 or Riccardo R. Buglisi, Director, Business Development Programs Group at (202) 205-7489.

Appendix A: FY 2009 Inappropriate Obligations and Use of Expired Funds

The table below details how SBA OCIO and contracting personnel inappropriately obligated FY 2009 Salaries and Expenses annual funds on IDIQ contract SBAHQ-09-D-0009 and issued task orders to “draw down” these funds in FY 2010.

Table 2. FY 2009 Salaries and Expenses Apportionment

| Modification/Task Order Number | Date of Award | Inappropriate Obligations | Draw Down |
|--------------------------------|-------------------|---------------------------|-----------------------|
| SBAHQ-09-D-0009 | 21 September 2009 | \$266,000.00 ¹ | |
| Modification 0001 | 28 September 2009 | \$1,025,000.00 | |
| SBA0003 | 10 November 2009 | | \$7,140.00 |
| SBA0004 | 10 November 2009 | | \$46,857.00 |
| SBA0005 | 6 January 2010 | | \$15,043.90 |
| SBA0006 | 6 January 2010 | | \$8,904.00 |
| SBA0007 | 6 January 2010 | | \$6,745.00 |
| SBA0008 | 25 January 2010 | | \$28,598.00 |
| SBA0010 | 27 January 2010 | | \$92,798.00 |
| SBA0016 | 18 March 2010 | | \$109,384.00 |
| SBA0017 | 30 March 2010 | | \$2,720.00 |
| SBA0018 | 30 March 2010 | | \$11,350.00 |
| SBA0019 | 30 March 2010 | | \$31,526.00 |
| SBA0020 | 30 March 2010 | | \$1,229.00 |
| SBA0021 | 21 April 2010 | | \$1,653.00 |
| SBA0022 | 21 April 2010 | | \$33,775.00 |
| SBA0024 | 22 April 2010 | | \$6,210.00 |
| SBA0025 | 22 April 2010 | | \$4,320.00 |
| SBA0026 | 23 April 2010 | | \$43,729.00 |
| SBA0028 | 28 June 2010 | | \$208,992.00 |
| SBA0029 | 25 June 2010 | | \$68,180.25 |
| SBA0031 | 11 August 2010 | | \$80,768.00 |
| SBA0032 | 11 August 2010 | | \$98,871.00 |
| SBA0033 | 11 August 2010 | | \$42,830.00 |
| SBA0044 | 2 August 2010 | | \$6,303.00 |
| SBA010 | 10 August 2010 | | \$45,400.00 |
| SBA0046 | 9 September 2010 | | \$45,100.00 |
| SBA0049 | 11 September 2010 | | \$28,830.00 |
| SBA0050 | 11 September 2010 | | \$32,644.00 |
| TOTAL: | | \$1,291,000.000 | \$1,109,900.15 |

¹ SBAHQ-09-D-0009 initial funding included an additional \$24,000 of no-year funding for a total obligation of \$290,000 (\$266,000 annual funds + \$24,000 no-year funds). We are not questioning the obligation of \$24,000 because those funds did not expire.

Appendix B: FY 2010 Inappropriate Obligations and Use of Expired Funds

The table below details how SBA OCIO and contracting personnel inappropriately obligated FY 2010 Salaries and Expenses annual funds on IDIQ contract SBAHQ-09-D-0009 and issued task orders to “draw down” these funds in FY 2011.

Table 3. 2010 Salaries and Expenses Apportionment

| Modification/Task Order Number | Date of Award | Inappropriate Obligations | Draw Down |
|--------------------------------|-------------------|---------------------------|---------------------|
| Modification 0004 | 9 September 2010 | \$235,000.00 | |
| Modification 0005 | 22 September 2010 | \$45,000.00 | |
| Modification 0006 | 24 September 2010 | \$1,580,000.00 | |
| SBA0055 | 15 October 2010 | | \$107,408.00 |
| SBA0056 | 26 October 2010 | | \$3,369.00 |
| SBA0057 | 22 November 2010 | | \$19,020.00 |
| SBA0057, Mod 0001 | 22 November 2010 | | \$580.00 |
| SBA0058 | 16 November 2010 | | \$1,365.00 |
| SBA0059 | 8 December 2010 | | \$21,350.00 |
| SBA0060 | 22 December 2010 | | \$51,032.00 |
| SBA0061 | 22 December 2010 | | \$41,189.00 |
| | TOTAL: | \$1,860,000.00 | \$245,313.00 |

Appendix C: Agency Comments



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

To: Peter L. McClintock
Deputy Inspector General

From: Jonathan I. Carver /s/
Chief Financial Officer

Date: May 24, 2011

Re: Response to Draft Report, Small Business Administration's Funding of Information Technology Contracts Awarded to Isika Technologies, Inc. (Project 10018A)

SBA is providing this revised response to the draft audit entitled "Small Business Administration's Funding of Information Technology Contracts Awarded to Isika Technologies, Inc." (Project 10018A).

We have reviewed the Isika Technologies, Inc. contract and the circumstances surrounding the obligation of funds for the contract. We believe that, as structured, it was possible for the Isika contract to have been utilized to purchase supplies that were properly obligated. However, unfortunately, the timing of the task orders did not result in proper contract utilization and obligation.

The Statement of Work for the Isika contract was for a mix of services and supplies. Severable services may be obligated in one fiscal year and provided for up to a 12-month period into the next fiscal year. 41 U.S.C. 253 *l*. Nonseverable services may be obligated in one fiscal year and provided for until the service is completed. See 23 Comp. Gen. 370 (1943). However, we can find no evidence that any services were purchased under the Isika contract. If they had been, then these authorities would serve to legitimize the services purchased within the legal timeframes (depending upon whether the services were severable or nonseverable).

Purchases of supplies are governed by a different set of rules. A bona fide need for supplies must be identified in the fiscal year in which the agency needs or consumes them. 31 U.S.C. 1502(a); See Betty F. Leatherman, Dept. of Commerce, 44 Comp. Gen. 695 (1965). The bona fide need rule restricts the current year's appropriated funds from being used to fund the next year's requirements. The rule has its genesis in section 31 U.S.C. §1502(a), which states:

“The balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability, or to complete contracts properly made within that period of availability and obligated consistent with section 1501 of this title.”

There are basically two exceptions to the bona fide needs supplies rule that supplies are the bona fide need of the year ordered: (1) the stock-level (inventory) exception (supplies ordered to meet authorized stock levels are the bona fide need of the year of purchase, even if the agency does not use them until a subsequent fiscal year (See Farmers Home Admin. Purchase of Office Chairs, 73 Comp. Gen. 259, 262 (1994); and (2) the lead-time exception (supplies are not available on the open market when ordered because the time to order, produce, and deliver the supplies requires the agency to purchase them in a prior fiscal year (see Chairman, United States Atomic Energy Commission, 37 Comp. Gen. 155, 159 (1957)). With the Isika contract, SBA had identified a list of supplies to purchase in FY 2009 as evidenced by the Proposed CLIN/ Product List in the contract’s Section J, Attachment A. We understand that SBA did intend to purchase supplies under the Isika contract using the stock-level (inventory) exception to the bona fide needs rule. A long list of needed supplies and equipment was drafted by the Office of Chief Information Officer. Unfortunately, no task order was issued for the needed supplies and equipment by the close of the funding fiscal year.

Thus, so far as can be ascertained, there was no intent to inappropriately or improperly obligate previous fiscal year funds to purchase the supplies. This was more an issue of erroneous contract implementation and administration than of willful and improper contract formation. SBA has taken many steps to control erroneous contract formation from taking place since the procurement function was moved, effective October 1, 2010, from the Office of Management and Administration, Office of Procurement and Grants Management, to the Office of the Chief Financial Officer and Performance Management, Denver Finance Center, Acquisition Division. SBA has cancelled the Isika contract and adjusted appropriation accounts to properly reflect that supplies ordered in a fiscal year were funded out of that fiscal year’s appropriations. SBA has also provided training to its Contracting Officers and Contracting Officers Technical Representatives on proper contract formation and administration. SBA also developed automated links between PRISM and ORACLE so that the contracting and finance databases are integrated. SBA also has plans to update and issue revised procurement and obligation guidance.

With this in mind, SBA offers the following revised responses to OIG Project 10018A.

Recommendations and Responses

1) Establish procedures to discontinue SBA’s practice of inappropriately obligating funds on contracts in anticipation of future needs.

OCFO recognizes the necessity of properly obligating Federal funds on SBA contracts. The Federal Government has a comprehensive system to ensure correct payments to vendors. The Treasury, Financial Management Service (FMS), ensures internal controls for electronic payments from

Agencies to vendors through its Automated Clearinghouse (ACH) and Electronic Funds Transaction (EFT) programs (i.e., Fedwire). See FMS Programs at www.fms.treas.gov/index/html. In addition, the Federal Acquisition Regulations provide guidance to Agencies on contractor payments. See 48 C.F.R. Part 32, Contract Financing. In addition, SBA has procedures to obligate contracts in the Disbursement Functions SOP 20 17 2, Ch. 3, Commercial Vouchers (Dec. 4, 1998) and the On-Line Payment and Collection (OPAC) Administrative Procedures SOP (Jan. 23, 1998). OCFO is also in the process of updating Small Purchases, Contracts, Grants and Cooperative Agreement SOP 00 11 1 and is redrafting a new Internal Controls SOP that has been in clearance. OCFO will pursue incorporating the appropriate steps to reinforce sound procurement and obligation procedures. OCFO, as the office now housing the Agency's certifying officers, takes its responsibility very seriously to ensure that there is no pattern or practice of "inappropriately obligating funds on contracts in anticipation of future needs" at SBA.

2) Direct the Contracting Officer to de-obligate inappropriately obligated funds on contract SBAHQ-09-D-0009.

SBA has made current and prior year appropriation account adjustments to make sure that all equipment and materials purchased from Isika, Inc. have been paid with funds from the fiscal year available when the equipment and materials were purchased. In other words, FY 2010 funds were used to pay for all equipment and materials purchased in FY 2010 and FY 2011 funds were used to pay for all equipment and materials purchased in FY 11 from Isika, Inc. On the accounts and records of the SBA, no FY 2009 funds are obligated for any equipment or materials purchased from Isika, Inc..

3) Develop and provide training to OCIO, current contracting personnel and newly hired staff regarding the establishment of bona fide need.

OCFO takes its responsibilities as the Agency's Senior Procurement Executive (SPE) and Chief Acquisition Officer (CAO) seriously. The Chief Acquisition Officer advises and assists the agency head and other senior officials to ensure that the agency mission is achieved through the management of the agency's acquisition activities. 41 U.S.C. 414. The functions of the Chief Acquisition Officer include monitoring the agency's acquisition activities, evaluating them based on applicable performance measurements, increasing the use of full and open competition in agency acquisitions, making acquisition decisions consistent with applicable laws, and establishing clear lines of authority, accountability, and responsibility for acquisition decision-making and developing and maintaining a

acquisition career management program. The Chief Acquisition Officer, as a part of the statutorily required annual strategic planning and performance evaluation process, assess agency requirements for agency personnel knowledge and skills in acquisition resources management and, if necessary, develop strategies and plan for hiring, training and professional development. The Senior Procurement Executive, reporting to the CAO, is responsible for management direction of the procurement system of the executive agency, including implementation of the unique procurement policies, regulations, and standards of the executive agency. SBA participates in the Chief Acquisition Officers Council (<http://www.caoc.gov/>) and implements best practices learned at the Agency. SBA also follows the guidance of the Office of Federal Procurement Policy (OFPP) regarding training of contracting personnel. More details on the CAO and SPE functions and the training of the acquisition staff are provided in the Acquisition Career Development Program SOP 39 15 2 (July 22, 2010). Under this guidance, SBA has provided several agency-wide COTR trainings, including training on the bona fide needs issue, and will continue to provide ongoing training to all acquisition staff.

4) Determine whether the SBA violated the Anti-Deficiency Act under the FY 2011 Continuing Resolution and take action consistent with the Anti-Deficiency Act if SBA determines there is a violation.

There are two possible ways to look at the Anti-Deficiency Act (ADA) in this situation.

First, it is possible this was violation of the bona fide needs statute that has been cured. The Isika contract is similar to contracts in the GAO decision: Expired Funds and Interagency Agreements between GovWorks and the Department of Defense, B-308944 (July 17, 2007). In the GovWorks case, DOD ordered supplies through the Department of Interiors' GovWorks service on an interagency agreement using FY 2004 funds. DOD failed to identify most of the ordered supplies with any specificity in FY 2004; GovWorks did not order any supplies until FY 2005. Since the purchase of supplies only identified in FY 2005 with FY 2004 funding violated the bona fide needs statute, GAO recommended DOD adjust its appropriations accounts to use FY 2005 funds for the ordered supplies. However, GAO provided that an ADA violation would only need to be reported if DOD had insufficient FY 2005 funds to pay for the FY 2005 supplies. Similarly, SBA had sufficient FY 2010 and FY 2011 funds to pay for all of the supplies ordered under the Isika contract and has adjusted its appropriation accounts. In other words, SBA cured any potential ADA violation by the adjustment of its appropriation accounts, which accounts had sufficient

unobligated funds to cover the cost of the supplies. The Acquisition Division has cancelled the Isika contract, deobligated all remaining funds on the contract, and properly adjusted the FY 2009, FY 2010, and FY 2011 appropriations accounts related to supplies purchased under the Isika contract, on March 30, 2011.

Second, it is possible that this was a violation of the ADA prohibition against obligating funds in advance of an appropriation. The ADA reads in pertinent part:

(a) (1) An officer or employee of the United States Government or of the District of Columbia government may not— ...

(B) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law. 31 U.S.C. 1341(a)(1)(B).

Under this analysis, no FY 2010 funds were available in September 2009 to meet the bona fide needs for FY 2010. Therefore, the obligation of funds upon the Isika contract in FY 2009 arguably, obligated funds in advance of the FY 2010 appropriations. Since there were no available FY 2010 funds in September 2009, to cure a potential violation, the obligation of funds upon the Isika contract in FY 2009, may potentially be deemed to be not subject to cure, and in that event, subject to reporting. See II Principles of Federal Appropriations Law, pp. 6-39.

OMB has issued instructions on preparing reports on ADA violations, which may be found in OMB Circular No. A-11, Preparation, Submission, and Execution of the Budget, § 145. Since the Isika situation could be analyzed in more than one way; and in order to adopt a conservative approach which favors maximum possible transparency; we are now in the process of pursuing appropriate reporting under the OMB Circular A-11 guidance.

5) Review all ongoing SBA indefinite delivery/indefinite quantity contracts as part of good financial management practices to ensure that task orders are being issued in accordance with Federal Acquisition Regulation Subpart 16.505 and not as a tool to inappropriately obligate funds.

The Acquisition Division of OCFO reviews all contracts in accordance with Government-wide (statutory, FAR, GSA, and OFPP guidance) and SBA-specific (SOPs) guidance. Contracts reviewed include all SBA indefinite delivery/indefinite quantity (IDIQ) contracts. We will continue to comply with FAR Subpart 16.5, Indefinite Delivery Contracts, including FAR section 16.505, Ordering. See 48 C.F.R Subpart 16.5.

- 6) Based on the review of all ongoing SBA indefinite delivery/indefinite quantity contracts, determine whether contracting officers violated FAR Subpart 1.602, “Contracting Officers,” and if so, take appropriate administrative actions.**

As stated previously, at the time of contract origination, the Isika contract funding was viable. SBA’s contracting program complies with FAR Subpart 1.6, Career Development, Contracting Authority, and Responsibilities. See 48 C.F.R Subpart 1.6. FAR Section 1.602 provides for authority, responsibilities, and ratification of unauthorized commitments by contracting officers. In particular, of relevance to this audit, FAR Section 1.602-2(a) provides that contracting officers “shall ensure that the requirements of section 1.602-1(b) have been met, and that sufficient funds are available for obligation.” FAR Section 1.602-1(b) provides that: “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.” We are continuing to investigate the facts of this situation and, if it is warranted, take appropriate administrative action. The OCFO will review ongoing indefinite delivery/indefinite quantity contracts and take appropriate administrative action if necessary.

- 7) Revise FY 2009 and FY 2010 FPDS-NG data for contract SBAHQ-09-D-0009 to ensure inappropriately obligated funds are not included in the FY 2010 Small Business Goaling Report.**

SBA is responsible for an Annual Small Business Goaling Report. Information on our Goaling Program can be found at <http://www.sba.gov/about-sba-services/2636>. At the end of each fiscal year, SBA requests a report from the Federal Procurement Data Center (FPDS) calculating the prime and subcontract statistical achievements for each agency and the Government-wide accomplishments. SBA forwards a copy of the report to each agency that negotiates goals with SBA. Each agency that fails to achieve any proposed prime or subcontract goal is required to submit a justification to SBA on why they failed to achieve a proposed or negotiated goal with a proposed plan of corrective action. In other words, each year’s Small Business Goaling Report is a snapshot of data mined from the Federal Procurement Data System (FPDS) as of a certain date. As the FPDS data is constantly in flux, it would be inefficient and uneconomical for SBA to continually alter the FPDS data as it changes on a daily basis. Therefore, it is not possible for SBA to change any previously collected FY 2009 and FY 2010 FPDS data for the Small Business Goaling Reports. However, SBA can and has taken steps to

ensure accurate small business procurement reporting by SBA of its contracts in future years for the next Small Business Goaling Report.

SBA is working 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. OCFO is in the process of hiring a new internal verification and validation contractor to do quality review.