



October 17, 2011

TO: Francis S. Collins, M.D., Ph.D.
Director
National Institutes of Health

FROM: /Daniel R. Levinson/
Inspector General

SUBJECT: Appropriations Funding for National Institute of Diabetes and Digestive and
Kidney Diseases Contract HHSN267-2007-00014C With the University of South
Florida (A-03-10-03110)

The attached final report provides the results of our review of appropriations funding for National Institute of Diabetes and Digestive and Kidney Diseases contract HHSN267-2007-00014C with the University of South Florida.

Section 8L of the Inspector General Act, 5 U.S.C. App., requires that the Office of Inspector General (OIG) post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://oig.hhs.gov>.

If you have any questions or comments about this report, please do not hesitate to call me, or your staff may contact Kay L. Daly, Assistant Inspector General for Audit Services, at (202) 619-1157 or through email at Kay.Daly@oig.hhs.gov. We look forward to receiving your final management decision within 6 months. Please refer to report number A-03-10-03110 in all correspondence.

Attachment

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**APPROPRIATIONS FUNDING FOR
NATIONAL INSTITUTE OF
DIABETES AND DIGESTIVE AND
KIDNEY DISEASES CONTRACT
HHSN267-2007-00014C WITH
THE UNIVERSITY OF
SOUTH FLORIDA**



Daniel R. Levinson
Inspector General

October 2011
A-03-10-03110

Office of Inspector General

<http://oig.hhs.gov>

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Section 8L of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG Web site.

OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

EXECUTIVE SUMMARY

BACKGROUND

The National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) is 1 of 27 institutes and centers of the National Institutes of Health (NIH), an agency of the Department of Health and Human Services (HHS). The NIH Office of the Director sets policy and plans, manages, and coordinates NIH-wide programs and activities. Like all Federal agencies, NIDDK is required to comply with appropriations statutes when acquiring supplies and services with appropriated funds.

An agency may obligate appropriations for goods and services when (1) the purpose of the obligation or expenditure is authorized, (2) the obligation occurs within the time limits for which the appropriation is available, and (3) the obligation and expenditure are within the amounts provided by Congress.

Federal statutes limit the purpose for which an agency may use appropriations to “the objects for which the appropriations were made except as otherwise provided by law” (31 U.S.C. § 1301(a)). Federal statutes also limit the time during which an appropriation is available. A fiscal year appropriation may be obligated only to meet a legitimate, or bona fide, need arising in, or in some cases arising prior to but continuing to exist in, the appropriation’s period of availability (31 U.S.C. § 1502). Congress determines the amount of funding available to an agency for the purchase of goods and services by enacting appropriations. The Antideficiency Act prohibits an agency from obligating or expending those funds in advance of or in excess of an appropriation unless specifically authorized by law (31 U.S.C. § 1341(a)(1)).

The Comptroller General has held that “the question of whether to charge the appropriation current on the date the contract is made, or to charge funds current at the time the services are rendered, depends on whether the services are ‘severable’ or ‘entire’ [nonseverable].” When services are continuing and recurring, they are severable, and the agency may fund the contract with fiscal year appropriations from the year in which services are provided, unless otherwise authorized by statute. When services are for a single outcome or effort, they are nonseverable and therefore chargeable to the fiscal year in which the contract is awarded, even though its performance may extend into subsequent fiscal years.

On September 15, 2007, NIDDK awarded contract HHSN267-2007-00014C (the Contract), totaling \$169.4 million, to the University of South Florida in Tampa, Florida. The Contract requires the contractor to serve as the data-coordinating center for a 10-year international clinical study to determine the environmental causes of juvenile diabetes and to analyze the study’s results. We determined that although the Contract statement of work may contain severable elements, on balance the Contract was nonseverable because it provided for a single outcome (a comprehensive set of technical and statistical reports) at the conclusion of the 10-year study.

From November 2008 through February 2009, an HHS internal review group called the “Tiger Team” assessed 176 HHS contracts, including 21 NIH contracts. The Contract was 1 of the 21 NIH contracts assessed. For 17 of the 21 contracts, the Tiger Team identified instances in which contract funding was not consistent with the current HHS Acquisition Regulation or

appropriations law. The Tiger Team report did not identify its concerns or quantify funding errors by contract.

OBJECTIVE

Our objective was to determine whether NIDDK funded the Contract in compliance with the purpose, time, and amount requirements specified in appropriations statutes.

SUMMARY OF FINDINGS

NIDDK funded the Contract in compliance with the purpose requirements of appropriations statutes. However, NIDDK did not comply with the time requirements and may not have complied with the amount requirements specified in the statutes. NIDDK funded only \$46.2 million of the \$169.4 million Contract obligation with fiscal year 2007 appropriations. NIDDK obligated \$10.5 million of fiscal year 2008 appropriated funds in violation of the bona fide needs rule and planned to obligate funds appropriated for future years as well. Because the Contract was for nonseverable services, NIDDK was required to record the full amount of the Contract using fiscal year 2007 appropriated funds. By not doing so, NIDDK potentially violated the Antideficiency Act.

To remedy the bona fide needs rule violation, NIDDK will need to deobligate the fiscal year 2008 appropriations and any future-year appropriations obligated after our review and obligate \$123.2 million (\$169.4 million less \$46.2 million) using fiscal year 2007 appropriations. If NIDDK does not have \$123.2 million of fiscal year 2007 appropriations available, it will violate the Antideficiency Act.

In addition, the NIH Office of Financial Management paid a duplicate charge of \$27,707 on behalf of NIDDK.

RECOMMENDATIONS

We recommend that NIDDK:

- deobligate \$10.5 million of fiscal year 2008 funds,
- deobligate any additional funds appropriated for years other than fiscal year 2007 that NIDDK may have obligated after our audit,
- record the remaining \$123.2 million of the \$169.4 million Contract obligation against fiscal year 2007 funds,
- report an Antideficiency Act violation if fiscal year 2007 funds are not available, and
- obtain a refund for the duplicate payment of \$27,707.

NATIONAL INSTITUTES OF HEALTH COMMENTS

In written comments on our draft report, NIH agreed that a bona fide needs violation had occurred and admitted violating the Antideficiency Act. NIH did not agree with our characterization of the Contract as a nonseverable service contract or the nature of the bona fide needs violation and, therefore, did not concur with the audit recommendation to correct the funding of the Contract.

Specifically, NIH stated that the Contract was for severable services and that it violated the bona fide needs rule because it obligated the Government to acquire severable services in advance of appropriations that could be used for such services. However, NIH said that HHS had reported the Antideficiency Act violation as required by 31 U.S.C. § 1351. NIH did not say that it had made or planned to make any corrections to the Contract funding.

NIH stated that on April 19, 2010, it had recovered the duplicate payment of \$27,707 as an offset against a subsequent invoice.

NIH's comments are included in their entirety as the Appendix.

OFFICE OF INSPECTOR GENERAL RESPONSE

While the statement of work may contain severable elements, we maintain that, on balance, the Contract is nonseverable. We determined the Contract was nonseverable because it was identified as “a 10-year international clinical study to determine the environmental causes of juvenile diabetes, and to analyze the study’s results” and because it provided for a single outcome (a comprehensive set of technical and statistical reports) at the conclusion of the 10-year study. Further, NIH stated that the Contract was for severable services but admitted that it did not properly fund the obligation under any of the allowable funding methods for severable service contracts.

NIH admitted violating the bona fide needs rule and the Antideficiency Act and stated that HHS has reported an Antideficiency Act violation. However, NIH failed to identify any actions, taken or planned, to correct the improper funding of the Contract as either a nonseverable or severable services contract. Until NIH takes corrective action, HHS cannot report the correct amount of its Antideficiency Act violation.

We have modified our recommendations to identify by fiscal year the adjustments necessary to properly fund a nonseverable services contract. As noted in the modified recommendations, NIDDK must record the remaining \$123.2 million against fiscal year 2007 funds and deobligate funds appropriated for other years.

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INTRODUCTION

BACKGROUND

The National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) is 1 of 27 institutes and centers of the National Institutes of Health (NIH), an agency of the Department of Health and Human Services (HHS). The NIH Office of the Director sets policy and plans, manages, and coordinates NIH-wide programs and activities. Like all Federal agencies, NIDDK is required to comply with appropriations statutes when acquiring supplies and services with appropriated funds.

Federal Appropriations Statutes

An agency may obligate appropriations for goods and services when (1) the purpose of the obligation or expenditure is authorized, (2) the obligation occurs within the time limits for which the appropriation is available, and (3) the obligation and expenditure are within the amounts provided by Congress.

Federal statutes limit the purpose for which an agency may use appropriations to “the objects for which the appropriations were made except as otherwise provided by law” (31 U.S.C. § 1301(a)). A fiscal year appropriation may be obligated only to meet a legitimate, or bona fide, need arising in, or in some cases arising prior to but continuing to exist in, the appropriation’s period of availability (31 U.S.C. § 1502(a)). Unless otherwise specified in the appropriation, the period of availability for most funds is the fiscal year for which the appropriation is made.

Bona fide needs may involve transactions that cover more than 1 fiscal year, depending on the nature of the services involved: “The general rule is that the fiscal year appropriation current at the time the contract is made is chargeable with payments under the contract, although performance thereunder may extend into the ensuing fiscal year” (23 Comp. Gen. 370, 371 (1943)).¹ Multiyear contracting authority provided by statute is an exception to the bona fide needs rule.

The Comptroller General has held that “the question of whether to charge the appropriation current on the date the contract is made, or to charge funds current at the time the services are rendered, depends on whether the services are ‘severable’ or ‘entire’ [nonseverable].”² When services are continuing and recurring, they are severable, and the agency may fund the contract with separate subsequent fiscal year appropriations. A contract for a single outcome or effort is chargeable to the fiscal year in which it is awarded, even though its performance may extend into subsequent fiscal years. The Comptroller General has explicitly held that incremental funding (i.e., other than full funding) of nonseverable service contracts violates the bona fide needs rule without statutory authority (71 Comp. Gen. 428 (1992)).

Congress determines the amount of funding available to an agency by enacting appropriations to cover programs, projects, purchases, and services needed by the agency during the period for

¹ As cited in GAO-04-261SP, *Appropriations Law*, Vol. I, p. 5-24.

² As cited in GAO-04-261SP, *Appropriations Law*, Vol. I, p. 5-23.

which the funds are made available. The Antideficiency Act prohibits an agency from obligating or expending funds in advance of or in excess of an appropriation unless specifically authorized by law (31 U.S.C. § 1341(a)(1)). The Antideficiency Act requires agencies to report violations to the President and to Congress, with a copy to the Comptroller General (31 U.S.C. § 1351). Office of Management and Budget (OMB) Circular A-11, *Preparation, Submission and Execution of the Budget*, part 4, § 145, prescribes the methodology for this reporting.

National Institute of Diabetes and Digestive and Kidney Diseases Contract Award

On September 15, 2007, NIDDK awarded contract HHSN267-2007-00014C (the Contract), totaling \$169.4 million, to the University of South Florida located in Tampa, Florida. The Contract requires the contractor to serve as the data-coordinating center for “The Environmental Determinants of Diabetes in the Young,” a 10-year international clinical study to determine the environmental causes of juvenile diabetes, and to analyze the study’s results. We determined that, although the Contract statement of work may contain severable elements, on balance the Contract was nonseverable because it provided for a single outcome (a comprehensive set of technical and statistical reports) at the conclusion of the 10-year study.

Departmental Review of National Institutes of Health Contracts

In 2008, HHS management formed an internal review group of program, contract, and financial personnel called the “Tiger Team.” From November 2008 through February 2009, the Tiger Team assessed 176 HHS contracts, including 21 NIH contracts. The Contract was 1 of the 21 NIH contracts assessed. For 17 of the 21 contracts, the Tiger Team identified instances in which contract funding was not consistent with the current HHS Acquisition Regulation (HHSAR) or appropriations law.³ The Tiger Team report did not identify its concerns or quantify funding errors by contract.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether NIDDK funded the Contract in compliance with the purpose, time, and amount requirements specified in appropriations statutes.

Scope

We reviewed all obligations and payments made under the Contract during fiscal years 2007 through 2009. We did not review NIDDK’s internal controls because our objective did not require such a review.

We performed our fieldwork at NIDDK in Bethesda, Maryland.

³ *Funding Multiple Year Contracts: Tiger Team Summary Report*, July 29, 2009.

Methodology

To accomplish our objective, we:

- reviewed appropriations and acquisition laws and regulations and Contract requirements;
- reviewed the Tiger Team report;
- reviewed Contract file documentation, including the statement of work, to determine the nature of the products or services to be provided; and
- analyzed funding documents and payment invoices to determine what appropriations were obligated, recorded, and expended.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

FINDINGS AND RECOMMENDATIONS

NIDDK funded the Contract in compliance with the purpose requirements of appropriations statutes. However, NIDDK did not comply with the time requirements and may not have complied with the amount requirements specified in the statutes. NIDDK funded only \$46.2 million of the \$169.4 million Contract obligation with fiscal year 2007 appropriations. NIDDK obligated \$10.5 million of fiscal year 2008 appropriated funds in violation of the bona fide needs rule and planned to obligate funds appropriated for future years as well. Because the Contract was for nonseverable services, NIDDK was required to record the full amount of the Contract using fiscal year 2007 appropriated funds. By not doing so, NIDDK potentially violated the Antideficiency Act.

To remedy the bona fide needs rule violation, NIDDK will need to deobligate the fiscal year 2008 appropriations and any future-year appropriations obligated after our review and obligate \$123.2 million (\$169.4 million less \$46.2 million) using fiscal year 2007 appropriations. If NIDDK does not have \$123.2 million of fiscal year 2007 appropriations available, it will violate the Antideficiency Act.

In addition, the NIH Office of Financial Management paid a duplicate charge of \$27,707 on behalf of NIDDK.

FUNDING VIOLATIONS

Bona Fide Needs Rule Violation

Federal statutes limit the time for which an appropriation may be used. A fiscal year appropriation may be obligated only to meet a legitimate, or bona fide, need arising in, or in some cases arising prior to but continuing to exist in, the appropriation's period of availability

(31 U.S.C. § 1502(a)). Bona fide needs may involve transactions that cover more than 1 fiscal year, depending on the nature of the services involved. A contract for nonseverable services must reflect a bona fide need identified in the fiscal year in which the agency awards the contract, although the contract's performance may extend into subsequent fiscal years. An agency must fully fund nonseverable service contracts by obligating funds representing the entire amount of the contract from appropriations available during the fiscal year in which the agency awards the contract.

In fiscal year 2007, NIDDK awarded the 10-year nonseverable service Contract and incurred an obligation totaling \$169.4 million based on an existing bona fide need. However, NIDDK recorded only \$46.2 million of the obligation with fiscal year 2007 appropriations. Subsequently, NIDDK improperly recorded an obligation of \$10.5 million using fiscal year 2008 funds. However, NIDDK did not have a bona fide need in fiscal year 2008. To remedy the bona fide needs violations, NIDDK will need to deobligate the \$10.5 million fiscal year 2008 appropriation and any future-year appropriations obligated after our review and obligate \$123.2 million (\$169.4 million less \$46.2 million) using fiscal year 2007 appropriations.

Potential Antideficiency Act Violation

Congress determines the amount of funding available to an agency by enacting appropriations to cover programs, projects, purchases, and services needed by the agency during the period for which the funds are made available. The Antideficiency Act prohibits the agency from obligating or expending any amount in advance of or in excess of an appropriation unless specifically authorized by law (31 U.S.C. § 1341(a)(1)). The Antideficiency Act requires agencies to report violations to the President and to Congress, with a copy to the Comptroller General (31 U.S.C. § 1351). OMB Circular A-11, part 4, § 145, prescribes the methodology for this reporting.

NIDDK should have recorded the full fiscal year 2007 obligation for \$169.4 million at the time of the Contract award. Instead, NIDDK recorded only \$46.2 million of the obligation with fiscal year 2007 appropriations. As noted above, to correct the bona fide needs violation, NIDDK will need to record an obligation of \$123.2 million using fiscal year 2007 appropriations. If NIDDK does not have \$123.2 million of fiscal year 2007 appropriations available, it will violate the Antideficiency Act.

CAUSES OF FUNDING VIOLATIONS

Generally, the Tiger Team report attributed funding violations to:

- widespread misunderstanding of appropriations laws because of conflicting HHSAR guidance over the past 25 years;
- the use of incremental funding in ways that were not consistent with the current HHSAR and appropriations law; and
- the need for additional training and a broader understanding of appropriations law among acquisition, budget, and program staff.

The Tiger Team did not identify the specific reasons for funding violations for each contract reviewed. HHS management corrected the conflicting guidance in HHSAR 332.702(a) and reissued it on December 20, 2006, 9 months before NIDDK awarded the Contract.

PAYMENT ERROR

The NIH Office of Financial Management paid a duplicate charge of \$27,707 on behalf of NIDDK. NIDDK advised us that the Office of Financial Management should have suspended the original invoice for \$27,707 but erroneously paid it. When the University of South Florida submitted a corrected invoice for \$178,239, which included the \$27,707, NIH paid the charge again.

RECOMMENDATIONS

We recommend that NIDDK:

- deobligate \$10.5 million of fiscal year 2008 funds,
- deobligate any additional funds appropriated for years other than fiscal year 2007 that NIDDK may have obligated after our audit,
- record the remaining \$123.2 million of the \$169.4 million Contract obligation against fiscal year 2007 funds,
- report an Antideficiency Act violation if fiscal year 2007 funds are not available, and
- obtain a refund for the duplicate payment of \$27,707.

NATIONAL INSTITUTES OF HEALTH COMMENTS

In written comments on our draft report, NIH agreed that a bona fide needs violation had occurred and admitted violating the Antideficiency Act. NIH did not agree with our characterization of the Contract as a nonseverable service contract or the nature of the bona fide needs violation and, therefore, did not concur with the audit recommendation to correct the funding of the Contract.

Specifically, NIH stated that the Contract was for severable services and that it violated the bona fide needs rule because it obligated the Government to acquire severable services in advance of appropriations that could be used for such services. However, NIH said that HHS had reported the Antideficiency Act violation as required by 31 U.S.C. § 1351. NIH did not say that it had made or planned to make any corrections to the Contract funding.

NIH stated that on April 19, 2010, it had recovered the duplicate payment of \$27,707 as an offset against a subsequent invoice.

NIH's comments are included in their entirety as the Appendix.

OFFICE OF INSPECTOR GENERAL RESPONSE

While the statement of work may contain severable elements, we maintain that, on balance, the Contract is nonseverable. We determined the Contract was nonseverable because it was identified as “a 10-year international clinical study to determine the environmental causes of juvenile diabetes, and to analyze the study’s results” and because it provided for a single outcome (a comprehensive set of technical and statistical reports) at the conclusion of the 10-year study. Further, NIH stated that the Contract was for severable services but admitted that it did not properly fund the obligation under any of the allowable funding methods for severable service contracts.

NIH admitted violating the bona fide needs rule and the Antideficiency Act and stated that HHS has reported an Antideficiency Act violation. However, NIH failed to identify any actions, taken or planned, to correct the improper funding of the Contract as either a nonseverable or severable services contract. Until NIH takes corrective action, HHS cannot report the correct amount of its Antideficiency Act violation.

We have modified our recommendations to identify by fiscal year the adjustments necessary to properly fund a nonseverable services contract. As noted in the modified recommendations, NIDDK must record the remaining \$123.2 million against fiscal year 2007 funds and deobligate funds appropriated for other years.

APPENDIX

APPENDIX: NATIONAL INSTITUTES OF HEALTH COMMENTS



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

National Institutes of Health
Bethesda, Maryland 20892

AUG 5 2011

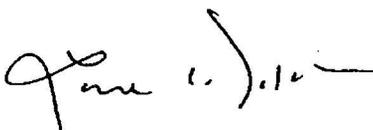
TO: Daniel R. Levinson
Inspector General, HHS

FROM: Director, National Institutes of Health

SUBJECT: Response to OIG Draft Report, *Appropriations Funding for National Institute of Diabetes and Digestive and Kidney Diseases Contract HHSN267-2007-00014C With the University of South Florida (A-03-10-03110)*

Attached are the National Institutes of Health's comments on the Office of Inspector General's draft report entitled, *Appropriations Funding for National Institute of Diabetes and Digestive and Kidney Diseases Contract HHSN267-2007-00014C With the University of South Florida (A-03-10-03110)*.

We appreciate the opportunity to review and comment on this important topic. We have provided general comments that address the findings and recommendations in the draft report. Should you have questions or concerns regarding our comments, please contact Meredith Stein in the Office of Management Assessment at 301-402-8482.


For Francis S. Collins, M.D., Ph.D.

Attachment

GENERAL COMMENTS ON THE DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE OF INSPECTOR GENERAL DRAFT REPORT ENTITLED: APPROPRIATIONS FUNDING FOR NATIONAL INSTITUTE OF DIABETES AND DIGESTIVE AND KIDNEY DISEASES CONTRACT HHSN267-2007-00014C WITH THE UNIVERSITY OF SOUTH FLORIDA (A-03-10-03110)

The National Institutes of Health (NIH) appreciates the review conducted by the Office of Inspector General (OIG) and the opportunity to provide clarification on this draft report. NIH respectfully submits the following comments.

Summary of OIG Findings:

- The National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) did not comply with the time requirements and may not have complied with the amount requirements specified in Federal appropriations statutes. NIDDK funded only \$46.2 million of the \$169.4 million contract obligation with fiscal year 2007 appropriations. NIDDK obligated \$10.5 million of fiscal year 2008 appropriated funds in violation of the *bona fide* needs rule and planned to obligate funds appropriated for future years as well.
- Because the contract was for nonseverable services, NIDDK was required to record the full amount of the contract using fiscal year 2007 appropriated funds. By not recording the full obligation using fiscal year 2007 appropriations, NIDDK potentially violated the Antideficiency Act.
- The NIH Office of Financial Management, on behalf of NIDDK, paid a duplicate charge (invoice) of \$27,707 in error.

Summary of OIG Recommendations:

- NIDDK should record the remaining \$123.2 million of the \$169.4 million contract obligation against fiscal year 2007 funds and deobligate funds appropriated for years other than fiscal year 2007.
- NIDDK must report an Antideficiency Act violation if fiscal year 2007 funds are not available.
- NIDDK should obtain a refund for the duplicate payment of \$27,707.

NIH Comments:

NIH does not concur with OIG's findings that the contract is for the performance of nonseverable services and, therefore, does not concur with the recommendations based upon those findings. NIDDK Contract HHSN267-2007-00014C is for the performance of services to support an NIDDK ten-year clinical study, not to perform the study itself. The NIDDK services contract supports the clinical study by requiring the contractor to provide continuous and recurring data management and coordinating services that NIDDK needs during each of the fiscal years

GENERAL COMMENTS ON THE DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE OF INSPECTOR GENERAL DRAFT REPORT ENTITLED: APPROPRIATIONS FUNDING FOR NATIONAL INSTITUTE OF DIABETES AND DIGESTIVE AND KIDNEY DISEASES CONTRACT HHSN267-2007-00014C WITH THE UNIVERSITY OF SOUTH FLORIDA (A-03-10-03110)

covered by the contract. Consequently, the contract is for the performance of severable rather than nonseverable services.

As awarded, the NIDDK contract was a multiple year contract covering the needs of more than one fiscal year. More specifically, it was a ten-year contract for the performance of severable services that NIDDK needed during the year in which the contract was awarded and in each of the subsequent fiscal years covered by the contract. The NIDDK appropriation that was available for obligation at the time of contract award was an annual appropriation and properly available for obligation only for the *bona fide* needs of that fiscal year. The NIDDK appropriations for those services needed in each of the subsequent nine years of the contract had not yet been made when the contract was awarded. Consequently, NIDDK violated the Antideficiency Act when it awarded a contract that obligated NIDDK appropriations not yet made, as prohibited by 31 U.S.C. § 1341(a)(1)(B).

NIH concurs that a violation of the Antideficiency Act occurred with respect to this contract. The Department of Health and Human Services (HHS) has reported the violation as required by 31 U.S.C. § 1351 based on its finding that NIH awarded a multiple year contract for severable services and legally obligated the government to pay for services needed in future years before NIH had received an appropriation to pay for those future services. The HHS report has identified the proposed actions taken to correct the systemic problems within HHS which led to this and other violations.

Regarding the duplicate payment, NIH has recovered the excess payment to the University of South Florida via an offset to a subsequent invoice. This action was completed on April 19, 2010.