



# Report in Brief

July 10, 2019

## Background

In November 29, 1999, the President signed into law the Patent and Trademark Office Efficiency Act, granting the U.S. Patent and Trademark Office (USPTO) authority to make purchases and enter into contracts with certain exemptions from the Federal Property and Administrative Services Act of 1949 and Competition in Contracting Act of 1984. As a result, USPTO is not subject to the Federal Acquisition Regulation (FAR) in its entirety. Although the Patent and Trademark Office Efficiency Act gives USPTO flexibility within the acquisition process, the agency is still required to maintain and retain government contract and order files and comply with closeout requirements outlined by the FAR and *Commerce Acquisition Manual (CAM)*. Contract closeout is a key step in ensuring that the Department has received the appropriate goods and services at the agreed-upon price. Physical completion of the contract initiates the contract closeout process. Contract closeout is important because it enables the federal government to protect its interest against litigation and releases excess funds tied to the contract by deobligation.

## Why We Did This Review

Our audit objective was to determine whether USPTO contracting personnel administered contract closeout procedures in accordance with federal and Departmental policy and regulations.

## UNITED STATES PATENT AND TRADEMARK OFFICE

### USPTO Could Improve Oversight Practices to Close Out Contract Files by Complying with Acquisition Regulations and Policies

OIG-19-018-A

#### WHAT WE FOUND

We reviewed a judgmental sample of 36 task/delivery orders associated with 8 contracts that had a total expended value of approximately \$615 million. In conjunction with USPTO policies, we used guidance from the FAR and CAM as a benchmark for identifying practices most beneficial to ensuring effective closeout of the sampled orders. We determined that contracting officials did not properly administer closeout procedures for the 33 of the 36 task/delivery orders. Specifically, we found that:

1. contracting officers did not close out orders timely;
2. contracting officials did not complete some key closeout steps;
3. contracting officer representatives were not adequately trained, certified and appointed; and
4. order files were missing or lacked key documentation.

Our review found deficiencies because contracting personnel did not comply with at least one or more of the closeout actions required by the FAR, CAM, and USPTO's policy memorandums. In addition, USPTO stated that it had a contractor perform closeout activities until April 2017, and that the contractor did not adequately comply with policy and regulations regarding required closeout timeliness.

Moreover, USPTO stated that a lack of acquisition management focus in overall closeout oversight efforts caused these deficiencies. USPTO's compliance with closeout requirements is critical to substantiate that goods and services were provided as intended, validate final costs and payments, and free excess funds for possible use elsewhere.

#### WHAT WE RECOMMEND

We recommend that USPTO's Director of the Office of Procurement do the following:

1. Improve controls and oversight processes to ensure compliance with federal and Departmental closeout requirements.
2. Ensure that contracting officers appoint, in writing, properly trained and certified CORs and remove those who fail to meet those requirements.
3. Ensure that all CORs meet their continuous learning requirements and be certified at the appropriate level.
4. Ensure that documents required to be in contract files to constitute a complete history of the transaction are contained in the contract file as identified in FAR Subpart 4.8.
5. Improve controls to ensure contract files are properly safeguarded and maintained as required by the FAR.