



Report in Brief

December 21, 2023

Background

In its fiscal year 2021–2023 acquisition forecast, the United States Patent and Trademark Office (USPTO) projects spending more than \$1.86 billion for contracted supplies and services. USPTO relies on contractors to perform services required for or in support of patent and trademark examination and other tasks. As such, careful consideration of appropriate acquisition strategies is critical to ensure USPTO's overall investment is spent wisely.

In 1999, the Patent and Trademark Office Efficiency Act gave USPTO its own procurement authority to promote innovation and efficiency. The Act provided USPTO procurement flexibility while ensuring objectivity to bolster or promote competition. It also granted USPTO certain exemptions from laws governing acquisition planning, including the Competition in Contracting Act of 1984 and certain parts of the Federal Acquisition Regulation.

As a result of these exemptions, USPTO developed the *Patent and Trademark Office Acquisition Guidelines* (PTAG), the *PTAG Desktop Guide*, and the *Patent and Trademark Office Acquisition Manual* (PTAM) to provide USPTO-specific guidance. Although USPTO has been working to update its policies and procedures, we have repeatedly found the need for improvements in strengthening USPTO's acquisition management efforts.

Why We Did This Audit

Our objective was to determine whether USPTO's processes and activities for acquisition planning are effective and consistent with established practices, procedures, and regulations.

UNITED STATES PATENT AND TRADEMARK OFFICE

USPTO Must Improve Acquisition Planning to Ensure Efficient and Competitive Procurements

OIG-24-008-A

WHAT WE FOUND

Overall, we found that USPTO's processes and activities for acquisition planning were ineffective and not consistent with established regulations, policies, and procedures. Specifically, we found the following:

- I. USPTO's policies and procedures did not provide sufficient guidance on the use of its PTAG acquisition procedures.
- II. USPTO did not retain key documents, and documents developed during acquisition planning were insufficient and not supported.
- III. USPTO did not adhere to federal regulations relating to the Small Business Administration's (SBA's) Business Development program (the 8(a) Program).

WHAT WE RECOMMEND

We recommend that the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office direct the Director of the Office of the Procurement to:

1. Create a comprehensive framework for acquisition planning by updating the PTAG, *PTAG Desktop Guide*, PTAM, and other supplemental documents to clearly define the proper use of its PTAG acquisition procedures.
2. Create and publish, with support from USPTO executives, a comprehensive and clear acquisition planning process including formalizing and updating acquisition planning policies and procedures.
3. Develop policies and procedures to ensure (1) appropriate acquisition planning documents, such as the market research, acquisition planning, and sole-source or other justifications, are retained in the contract file and (2) current reviews and approvals for acquisition planning are properly documented and enforced.
4. Provide and require initial and ongoing training for business unit staff and other personnel on agency-specific acquisition planning processes, requirements, and roles and responsibilities.
5. Develop policies and procedures to provide oversight of 8(a) Program acquisitions to ensure those acquisitions comply with federal regulations to mitigate the risk of questioned costs, identified at about \$38 million in obligated amounts.