



# Report in Brief

JUNE 16, 2016

## Background

Competition is a cornerstone of the federal acquisition system and a critical tool for achieving the best possible return on investment for taxpayers. Some degree of noncompetitive contracting is unavoidable—such as when only one responsible source can perform the work—and, in some cases, competition is impractical due to the government's previous reliance on specific contractors. However, competitive contracts can help save money, conserve scarce resources, improve contractor performance, curb fraud, and promote accountability. Competition also discourages favoritism by leveling the playing field for contract competitors and curtailing opportunities for fraud and abuse.

In 2003, USPTO published the Patent and Trademark Acquisition Guidelines (PTAG), which allows for flexibility within their acquisition process. For FY 2014 and the first quarter of FY 2015, USPTO awarded 104 noncompetitive contracts (e.g., contracts and task orders) with a total obligated value of approximately \$51.6 million.

## Why We Did This Review

Our objective was to determine whether USPTO's noncompetitive contract awards were properly justified.

## U.S. PATENT AND TRADEMARK OFFICE

### Awarding of U.S. Patent and Trademark Office Noncompetitive Contracts Did Not Consistently Follow Guidelines and Best Practices

OIG-16-033-A

#### WHAT WE FOUND

We found that contracting and program officials did not consistently follow USPTO policies and best practices for justifying and awarding noncompetitive contracts and task orders. We also found that contract files were not properly maintained. We determined that USPTO did not have adequate acquisition planning processes in place, both to leverage competition as well as assure that it received fair and reasonable prices. Specifically, we found: (a) market research was not sufficient to support sole-source justifications, and that using competitive rather than noncompetitive procedures could have potentially saved approximately \$23.2 million in acquisition costs; (b) appropriate signature authorities were not obtained to approve the use of noncompetitive contracts; (c) USPTO does not follow federal best practices defining the competition advocate's role in reviewing noncompetitive contract justifications; (d) price reasonableness determination documentation was missing or lacked rationale for price reasonableness resulting in \$108 million in determination decisions that could not be verified; (e) and the Office of Procurement is not used as a strategic partner with other organizational components.

#### WHAT WE RECOMMEND

We recommended that Deputy Under Secretary of Commerce for Intellectual Property and the Deputy Director of USPTO: (1) Require that the competition advocate and program offices are actively involved in highlighting opportunities to increase competition; and (2) Require program offices to coordinate with the Office of Procurement throughout the strategic planning process to develop efficient, effective, and economical acquisition strategies to include opportunities to promote competition.

We also recommended that the Director of Office of Procurement (3) Require contracting officers to maintain supporting documentation in the contract file describing the specific steps taken and the results of the market research conducted; (4) Require contracting officers to examine opportunities to expand the vendor competition base in which vendors are chosen when only one responsible source and no other supplies or services will satisfy agency requirements; (5) Enforce current approval authorities for all contracts as defined in USPTO Policy Memorandum 2014-02 (Revision 3); (6) Include documentation and approval authority requirements in future training sessions for acquisition workforce staff; (7) Establish guidance to require that the competition advocate review and approve noncompetitive contracts over a certain dollar threshold; (8) Establish guidance to reflect best practices for retaining, as part of the contract file, the supporting documentation used to make price reasonableness determinations; and (9) Improve controls to properly maintain and safeguard contract files.