



[3510-16-P]

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Chapter I

[Docket No.: PTO-C-2013-0044]

Patent and Trademark Office Acquisition Guidelines (PTAG)

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) has updated the Patent and Trademark Office Acquisition Guidelines (PTAG), which are the agency's internal operating procedures for procurement.

DATES: [Insert Date of Publication in the Federal Register]

ADDRESSES: *Written comments:* Please submit any comments by e-mail to loren.howcroft@uspto.gov. Although electronic comments are preferred, written comments may be submitted by postal mail addressed to: Loren Howcroft, Division Chief – Policy, Analysis and Liaison Division, United States Patent and Trademark Office, Madison East Building, Room MDE 7D03, 600 Dulany Street, Alexandria, VA 22314. Comments may also be submitted through the Federal eRulemaking Portal at <http://www.regulations.gov>. Comments submitted to the Federal eRulemaking Portal should include docket number PTO-C-2013-0044 in the subject line of the e-mail. All comments made through the Federal eRulemaking Portal Web site will be

made available for public inspection. Therefore, any information that should not be made public, such as an address or phone number, should not be included in the comments. While the USPTO welcomes and values all comments from the public in response to this notice, these comments do not bind the USPTO to any further actions related to the comments, and the USPTO may not respond to any or every comment that is submitted. The USPTO will, however, give consideration to all comments received. To view the PTAG, please visit the USPTO's Web site at <http://www.uspto.gov> and type "PTAG" in the search box.

FOR FURTHER INFORMATION CONTACT: Loren Howcroft, Division Chief – Policy, Analysis and Liaison Division, Office of the Chief Financial Officer, Office of Procurement, by telephone at (571) 270-1625, or by mail addressed to: Loren Howcroft, Division Chief – Policy, Analysis and Liaison Division, United States Patent and Trademark Office, Madison East Building, Room MDE 7D03, 600 Dulany Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION: As outlined herein, the PTAG has been reorganized into parts that follow the acquisition process and that can be more easily cited. Clarifying language was added to more fully explain the USPTO's agency-specific procurement flexibilities. This updated PTAG supersedes the one issued on March 10, 2003 [68 FR 25, 2/6/03, effective 3/10/03]. This PTAG will be effective as of [Insert Date of Publication in the Federal Register].

Nature of Guidelines:

The alternate procedures set forth in this notice are intended to incorporate brevity of content, streamlined procedures, innovation in process, flexibility, and discretion to the acquisition

process while ensuring objectivity and maximum reasonable competition. USPTO employees may use procedures other than those set forth in the Federal Acquisition Regulation (FAR) and this notice so long as those procedures comply with all applicable statutes, Executive Orders and regulations, will further the legitimate interests of the USPTO and are calculated to result in fair decisions. Neither the FAR nor the alternate guidance provided in this notice is binding on USPTO vendors or any other member of the public, except to the extent provisions therefrom are incorporated in legally enforceable contracts. Instructions set forth in solicitations or other procurement documents are also binding in that they may establish conditions on an offeror's continued participation in the procurement process.

Guidelines

Part 1 – Introduction

In accordance with the Patent and Trademark Office Efficiency Act (PTOEA), 35 U.S.C. 2(b)(4)(A), the USPTO possesses its own procurement authority. 35 U.S.C. 2(b)(4)(A) also provides the USPTO with certain exemptions from the Federal Property and Administrative Services Act (FPAS) and the Competition in Contracting Act (CICA). As a result of these exemptions, the USPTO is not subject to the FAR in its entirety. The purpose of the Patent and Trademark Office Acquisition Guidelines (PTAG) is to provide internal operating procedures for how the USPTO will conduct its acquisitions as a result of these exemptions.

Part 2 – Acquisition Planning

2.0 Scope of Part

Acquisition planning is the joint responsibility of the entire acquisition team, which includes the Contracting Officer (CO) and the technical/program representatives. Acquisition planning serves

two important purposes: it establishes how an agency will meet programmatic requirements within the agency's budgetary goals and it serves as a guideline for the acquisition.

2.1 Procedures

COs will work with the technical/program representatives to clearly describe the agency's approach to individual acquisitions. The content, length and complexity of the individual acquisition plan shall be left to the discretion of the acquisition team. When an acquisition plan is appropriate, it shall include:

1. Description of what the USPTO is procuring
2. Cost estimate (including option years as appropriate)
3. Which organization the acquisition will support
4. How the requirement will be used by the agency
5. Development of the acquisition strategy (including risk assessments)
6. Anticipated milestone schedule

2.2 Acquisition Forecasting

As a result of exemptions described in Part 1 above, the USPTO is not required to report its acquisition forecast in governmentwide advance acquisition planning systems. However, to encourage vendor involvement in upcoming acquisitions and to allow for effective workload management, the USPTO maintains and publishes its acquisition forecast on its Office of Procurement's Web site.

Part 3 – Electronic Commerce

The USPTO will use governmentwide acquisition systems to the maximum extent practicable to procure its products and services. The USPTO may use vendor-managed acquisition systems, such as reverse auctioning tools, when it is in the best interest of the agency to do so. The USPTO will use the Governmentwide Point of Entry (GPE), as defined in FAR 2.101, to post

synopses, requests for information, solicitations, contract awards, and other pertinent contractual information, as appropriate. The Office of Procurement Web site will be used to provide information about the USPTO's procurement guidelines, to publish the acquisition forecast, to post the small business goals, and to communicate upcoming events and items of interest to the vendor community.

Part 4 – Market Research

4.0 Scope of Part

Market research is the means by which the USPTO will identify and determine the availability of products or services that will satisfy its requirements. When appropriate, market research may also be used to determine the acquisition strategy and contract type. Market research is the responsibility of the entire acquisition team.

4.1 Procedures

COs should work closely with the technical/program representatives to conduct market research. The CO must document the results of the market research in the contract file. The CO has the discretion to determine the extent of the market research as appropriate for the particular procurement.

4.2 Market Research Resources

The acquisition team may refer to one or more of the following sources for market research data:

1. Publicly available sources of data
2. Governmentwide sources of data
3. Requests for Information
4. Vendor Days
5. Pre-proposal Conferences
6. Any other source deemed to be reasonably reliable

Part 5 – Competition

5.0 Scope of Part

As a result of its exemptions described in Part 1 above, the USPTO is not required to meet the test of “full and open competition” as defined in FAR Part 6. In addition, the CO may use agency-specific acquisition procedures as described herein when the particular circumstances warrant it and it is in the best interest of the agency to do so. The USPTO will endeavor to conduct its procurements on a competitive basis under the FAR when it is reasonable to do so.

5.1 Procedures

1. COs must document the contract file to explain their decisions regarding the use of competition and to what extent it will be used.
2. COs must fulfill the notification requirements set forth in FAR Part 5 “Publicizing Contract Actions.”

Part 6 – USPTO-Specific Acquisition Procedures

6.0 Scope of Part

The USPTO has established the following non-exhaustive list of agency-specific acquisition procedures, which may be used in addition to those procedures already available under the FAR. The CO has the discretion to determine whether to use any of the procedures as appropriate for the particular procurement.

6.1 Procedures

6.1.1 Alternative Competition Method

- a. After conducting market research, the CO and Contracting Officer’s Representative (COR) will use their technical expertise and understanding of the marketplace to determine

which vendor(s) is/are the most likely to successfully meet the agency's needs and are thereby eligible to participate in an alternative competition.

- b. The CO should consider the USPTO's small business goals when determining which vendor(s) can participate in an alternative competition.
- c. When synopsisizing an alternative competition, the CO shall insert the following statement:
"The subject requirement is being procured using the Alternative Competition Method in accordance with the Patent and Trademark Office Acquisition Guidelines (PTAG) and the Patent and Trademark Office Efficiency Act 35 U.S.C. 2(b)(4)(A)."
- d. Instead of posting the solicitation on the GPE, the CO will send it directly to the selected vendor(s).

6.1.2 Micro-purchases

- a. The USPTO's micro-purchase threshold is double the value listed in FAR 2.101 "Micro-purchase."
- b. The total value of USPTO's micro-purchase threshold shall not exceed the synopsis threshold established in FAR 5.101 (a) (1) "Methods for disseminating information."
- c. The USPTO shall generally refer to and follow the policies and procedures set forth in FAR Part 13.2 "Actions At or Below the Micro-Purchase Threshold" for guidance for all of its micro-purchase awards.

6.1.3 Simplified Acquisition Procedures for Commercial Items

- a. The USPTO's threshold to use simplified acquisition procedures for commercial items is double the value listed in FAR 13.5 (a) "Test Program for Certain Commercial Items."
- b. The USPTO's authority to use these procedures will not expire, even in the event that the test program in the FAR does expire. In the event that the FAR-based program does expire, the USPTO's COs are authorized to use the latest policies and procedures set forth in the FAR prior to cancellation of the test program.

- c. The USPTO shall generally refer to and follow the policies and procedures set forth in FAR Part 13.5 for guidance for all awards issued in accordance with PTAG 6.1.3.

6.1.4 Socio-economic Small Business Utilization Program

- a. Up to the threshold established in FAR 15.403-4 “Requiring certified cost or pricing data,” the USPTO may award contracts to companies in the following socio-economic program categories on a sole source basis: small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, woman-owned small business, and HubZone small business.
- b. When using the procedures under this section 6.1.4, and upon receiving a new requirement, the CO must consider the USPTO’s current small business goal achievements when determining which socio-economic program to use.
- c. Once the socio-economic program has been selected based upon the results of the market research and/or the CO and COR’s knowledge of the market place, the CO can identify a qualified business. A qualified business is one that has demonstrated the ability to successfully perform work similar in scope, complexity, and dollar value to the current requirement.
- d. The CO must post the Statement of Work (SOW) or Performance Work Statement (PWS) and a statement similar to the following on the GPE for no less than 15 calendar days: “The USPTO intends to award the [brief description of the requirement] to [insert vendor name here], a [insert socio-economic program here] small business, in accordance with the Patent and Trademark Office Efficiency Act, 35 U.S.C. 2(b)(4)(A). Any other vendor that is part of the [insert socio-economic program here] may contact the Contracting Officer to express interest in competing for the requirement within the synopsis period. When contacting the Contracting Officer, vendors must submit a capability statement that does not exceed [insert number of pages here] pages in length that shows their ability to perform the requirement.”

- e. If a vendor within the selected socio-economic program is deemed to be qualified by the CO and/or COR using the criteria established in subparagraph d above, the CO will include them in a restricted sources competition.
- f. If the vendor has been deemed to be unqualified, the CO must notify them in writing providing a brief explanation for why they were considered to be unqualified. To the maximum extent practicable, notification will happen within 5 business days after the end of the synopsis period.

6.1.5 Streamlined Negotiated Acquisition Procedures

- a. The USPTO may elect to use a Streamlined Negotiated Acquisition Procedure, under which COs may generally refer to and follow the policies and procedures set forth in FAR Part 15 “Contracting by Negotiation.” Outlined below are some notable exceptions to the current FAR Part 15 procedures that the CO may elect to use under this section 6.1.5.
 - b. COs may use the combined synopsis/solicitation feature provided in the GPE when posting a requirement using FAR Part 15 policies and procedures.
 - 1. COs must allow the combined synopsis/solicitation to be posted for no less than 30 calendar days.
 - 2. When utilizing this procedure, COs must include the following statement in the synopsis portion of their combined synopsis/solicitation: “This requirement is being posted as a combined synopsis/solicitation in accordance with the Patent and Trademark Office Acquisition Guidelines (PTAG) Part 6 – USPTO-Specific Acquisition Procedures.”
 - 3. The synopsis/solicitation must address the same requirements set forth in FAR Part 5.1 “Dissemination of Information” and FAR 15.203 “Requests for Proposals.”
- c. COs do not need to request, as part of their solicitations, that vendors provide information that is available in a governmentwide system. For example, the contracting officer does not need to request that the vendor submit Section K “Representations, certifications, and other

statements of offerors or respondents” as part of their proposal since that information is currently available in the System of Award Management (SAM).

1. When utilizing this procedure, COs must include the following certification requirement in their solicitations: “I [insert vendor name here] certify that the information provided in the governmentwide system is current, true and accurate as of [insert date of proposal submission]. I further certify that my company is a [insert business size standard] for North American Industry Classification System (NAICS) code [insert NAICS for the requirement].”
2. The vendors must put this certification in the introduction portion of their proposals.

Part 7 – Contract Types

7.0 Scope of Part

Where appropriate, the USPTO may use any contract type provided for in the FAR without regard to any limitations specified therein, and in addition may use hybrid or other contract types not provided for in the FAR.

7.1 Indefinite-Delivery Contracts

- a. The USPTO is not required to make multiple awards for indefinite-quantity contracts under any circumstances, or where multiple awards are made, to use any specific procedures for placing task or delivery orders.
- b. COs are encouraged, however, to consider the use of multiple awards when doing so would be in the best interest of the USPTO.
- c. A solicitation contemplating multiple awards must address the procedures the USPTO will use for selecting between contractors when awarding task or delivery orders.
- d. Where a specific procurement includes procedures for seeking task or delivery order proposals from multiple contractors, applying these procedures to individual requirements

below the micropurchase threshold stated in PTAG Part 6.1.2 (a) will typically not be in the best interest of the USPTO.

7.2 Options

- a. As a result of its exemptions described in Part 1 above, USPTO may renegotiate options contained in an existing contract without seeking further competition when it is in the best interest of the agency to do so (for example for the purpose of seeking a price reduction, adjusting quantities, and/or adjusting performance periods).
 1. The USPTO will notify the vendor that it intends to renegotiate the option at the time that USPTO provides the notice required by FAR Part 17.207 (a) “Exercise of Options.”
 2. The CO will issue a bilateral modification when exercising a renegotiated option.
 3. Any changes to option pricing would be made normally for the purpose of implementing a price reduction. The CO may only renegotiate an increase to the overall price of a pre-priced option when the price increase directly corresponds with either a higher quantity or longer period of performance than the option under negotiation.
- b. As a result of its exemptions described in Part 1 above, USPTO may make award on the basis of unpriced options contained in an existing contract without seeking further competition. COs may consider using unpriced options as a performance incentive.
- c. In addition to 7.2.a. and 7.2.b, COs retain their authority to unilaterally exercise options in accordance with the terms of the options.

Part 8 – Bid Protests

The USPTO continues to be subject to the bid protest jurisdiction of the Government Accountability Office and of the Court of Federal Claims. The USPTO is also subject to Executive Order 12979 concerning protests to the agency. To see the procedures for considering such protests, please refer to www.uspto.gov and type “Agency Level Protests” in the search box.

Part 9 – Printing

The USPTO is exempt from the requirement to use the Government Printing Office to meet its printing needs per 35 U.S.C. § 2(b)(4)(B). Accordingly, the USPTO intends to acquire printing by the most economic and efficient means available, which may in particular acquisitions include the Government Printing Office.

Part 10 – Deviations

The USPTO has the option to implement the deviations granted by the Department of Commerce (DOC) when it is in the best interest of the agency to do so. To see a list of deviations granted by DOC, please refer to www.commerce.gov and type “Procurement Memoranda” in the search box.

Date: September 30, 2013.

Teresa Stanek Rea
Deputy Under Secretary of Commerce for Intellectual Property and
Deputy Director of the United States Patent and Trademark Office

[FR Doc. 2013-24316 Filed 10/02/2013 at 8:45 am; Publication Date: 10/03/2013]