

USPTO Needs to Improve Its Small Business Contracting Practices

FINAL REPORT NO. OIG-20-045-A

SEPTEMBER 1, 2020



U.S. Department of Commerce
Office of Inspector General
Office of Audit and Evaluation



September 1, 2020

MEMORANDUM FOR: Andrei Iancu
Under Secretary of Commerce for Intellectual Property
and Director of the U.S. Patent and Trademark Office

FROM: 
Frederick J. Meny, Jr.
Assistant Inspector General for Audit and Evaluation

SUBJECT: *USPTO Needs to Improve Its Small Business Contracting Practices*
Final Report No. OIG-20-045-A

Attached for your review is the final report on the audit of the U.S. Patent and Trademark Office's (USPTO's) small business utilization. The objectives were to determine whether USPTO (1) achieved its small business utilization goals, (2) contracting officials provided small businesses with adequate contract award opportunities, and (3) took appropriate actions to ensure contracting officials met small business contracting goals.

We contracted with Booth Management Consulting, LLC (BMC)—an independent firm—to perform this audit of USPTO. Our office oversaw the progress of this audit to ensure that BMC performed the audit in accordance with generally accepted government auditing standards and contract terms. However, BMC is solely responsible for the attached report and conclusions expressed in it. As discussed in the attached report, BMC concluded that USPTO did not

1. meet its small business utilization goals,
2. provide small businesses with adequate contract award opportunities, and
3. take appropriate actions to meet small business contracting goals.

BMC recommended in the report that the Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office direct the Director of the Office of Procurement to ensure that the following occur:

1. Contract specialists verify small business eligibility prior to awarding small business contracts.
2. Contract specialists perform and appropriately document small business set-aside reviews.
3. Historically Underutilized Business Zones small business consideration is included in its annual acquisition forecasting activities and marketing efforts to maximize contracting opportunities.
4. The Office of Procurement uses the Forecasting and Advanced Acquisition Planning System and establishes clear lines of communication between the Office of

Procurement, small business specialists, and contracting specialists for all procurement requests.

On July 13, 2020, we received USPTO's response to BMC's draft report. In response to BMC's draft report, USPTO generally concurred with all of the recommendations and described actions it has taken, or will take, to address them. USPTO's formal response is included within the final report as appendix B.

Pursuant to Department Administrative Order 213-5, please submit to us an action plan that addresses the recommendations in this report within 60 calendar days. This final report will be posted on OIG's website pursuant to sections 4 and 8M of the Inspector General Act of 1978, as amended (5 U.S.C. App., §§ 4 & 8M).

We appreciate the cooperation and courtesies extended to BMC by your staff during this audit. If you have any questions or concerns about this report, please contact me at (202) 482-1931 or Amni Samson, Director for Audit and Evaluation, at (571) 272-5561.

Attachment

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BOOTH MANAGEMENT CONSULTING, LLC

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SUBJECT: USPTO Needs to Improve Its Small Business Contracting Practices

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Introduction

America's small businesses help strengthen the economy and support the American workforce. The U.S. Small Business Administration (SBA) was created in 1953 to support small business creation and growth. One important supporting role SBA serves is to work with Congress to require small business procurement goals for federal agencies.¹ These procurement goals support businesses in economic growth areas and small businesses owned by women, minorities, and veterans.

In compliance with SBA requirements, the federal government—including the U.S. Department of Commerce (the Department)—establishes sub-goal percentages for its bureaus to provide maximum practicable acquisition opportunities to small businesses. Each bureau then translates the sub-percentage goal to available procurement dollars.² The Department sets the sub-goals for the U.S. Patent and Trademark Office (USPTO), although USPTO is legally exempt from some acquisition requirements.³ Because of these exceptions, USPTO developed the *Patent and Trademark Office Acquisition Guidelines (PTAG)*⁴ to provide internal operating procedures for conducting its acquisitions, including with small businesses.⁵

As stipulated by SBA and the Department, USPTO is required to award a percentage of spending dollars to specific set-aside small business concerns (SBCs)⁶ such as economically and socially disadvantaged small businesses, including 8(a) businesses and businesses in Historically Underutilized Business Zones (HUBZones).⁷ SBCs must register their company in the System for Award Management (SAM)—a federal government contracting portal—to be eligible to compete for specific set-aside and sole-source contracts. SBCs must complete annual reviews to maintain their certification.

In addition to SAM registration, businesses that are eligible to participate in the 8(a) Business Development Program⁸ (8(a) Program) must also complete a certification with SBA—and, if

¹ 15 U.S.C. Chap. 14A § 633.

² SBA defines *available procurement dollars* as all types of contracts that a small business may obtain and use as a part of the baseline to compute the percentage of procurement dollars that are awarded to a small business.

³ USPTO is exempt from the Federal Property and Administrative Services Act of 1949 (40 U.S.C. Chap. 1 § 101 et seq.) and the Competition in Contracting Act of 1984 (41 U.S.C. 253).

⁴ U.S. Department of Commerce U.S. Patent and Trademark Office, March 10, 2003. *Patent and Trademark Office Acquisition Guidelines (PTAG)*, Revised October 3, 2013. Alexandria, VA: DOC UPSTO.

⁵ Relevant to small business, *PTAG* Part 6.1.4. states that (1) contracting officers must consider the USPTO's current small business goal achievements when determining which socioeconomic program to use; and (2) USPTO may award contracts to socioeconomic small business on a sole-source basis up to the threshold established in the Federal Acquisition Regulation (FAR) 15.403-4.

⁶ A *small business concern* is a business entity that (1) meets SBA's size standards; (2) is organized for profit; (3) makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor; and (4) is eligible for SBA and other federal assistance.

⁷ HUBZones are designated geographic zones with high unemployment and low median income.

⁸ The 8(a) Program is a 9-year business assistance program for small disadvantaged businesses. The 8(a) Program offers a broad scope of assistance to firms that are owned and controlled at least 51 percent by socially and economically disadvantaged individuals.

accepted into the program, SBA's Dynamic Small Business Search (DSBS)⁹ system will reflect the approval date. SBCs with an 8(a) Program certification will graduate from the program after 9 years.

As a liaison between the agency and the small business community, USPTO's Office of Procurement collects and reports procurement data into the Federal Procurement Data System—Next Generation (FPDS-NG) database to track the achievement of small business procurement goals. For fiscal years (FYs) 2017 and 2018, USPTO awarded 3,953 contracts—valued at more than \$1.43 billion—to small businesses for patent and trademark information technology systems, facilities management, and non-technical services and supplies.

⁹ DSBS is an SBA tool for contracting officers to find and verify 8(a) Program and HUBZone small businesses.

Objectives, Findings, and Recommendations

This report presents the results of our work conducted to address the performance audit objectives to determine whether USPTO (1) achieved its small business utilization goals; (2) contracting officials provided small businesses with adequate contract award opportunities; and (3) took appropriate actions to ensure they met small business contracting goals.

To accomplish the audit objectives, we statistically selected 648 awarded contract files. During the planning phase, USPTO was unable to locate all of the files or some files were incomplete. As a result, we adjusted the sample size to 476 files. Due to delays in receiving complete files for all 476 awarded contracts, we judgmentally selected 67 files to review small business status certification, small business set-aside justifications and HUBZone small business considerations. See appendix A for a more detailed description of our objectives, scope, and methodology.

Based on the results of attribute testing of the judgmental samples selected, we found that USPTO did not

1. meet its small business utilization goals;
2. provide small businesses with adequate contract award opportunities; and
3. take appropriate actions to meet small business contracting goals.

USPTO did not meet its small business goals because it did not have a consistent process to award small business contracts, there was insufficient coordination between various procurement offices, and there was inadequate oversight of its acquisition planning. Without a consistent process in place and adequate oversight, USPTO is unable to provide maximum practicable acquisition opportunities to small businesses.

I. USPTO Did Not Meet Its Small Business Utilization Goals

The Department's Office of Small and Disadvantaged Business Utilization ensures that USPTO meets SBA's overarching goals by establishing the agency's small business utilization percentage goals to increase the number of awarded contracts and award dollars to SBCs. For FYs 2017 and 2018, USPTO's available small business dollar amounts were approximately \$461 million and \$853 million—and its small business utilization goals for prime contracts were 54 percent and 49 percent, respectively.¹⁰

USPTO reported in FPDS-NG that it met its FY 2017 goal and missed its FY 2018 goal by 1 percentage point. However, we found that USPTO inaccurately reported its achieved small business procurement goals because it awarded contracts to SBCs that were not registered as a small business (see table 1 for additional details).

¹⁰ The government awards *prime contracts* directly to the SBC. The prime contractor is responsible for ensuring that the work is completed as defined in the contract and may subcontract out parts of the contract.

Table 1. USPTO’s Small Business Goal Achievements for FYs 2017 and 2018

	FY 2017	FY 2018
Available Small Business Dollar Amount	\$461,229,013	\$852,953,698
Small Business Utilization Dollar Goal	\$249,063,667	\$417,947,312
USPTO Reported Achieved Dollar Amount	\$248,701,414	\$410,529,036
Ineligible SBC Contract Dollar Amount (based on a judgmental sample of 67 procurement files)	\$32,628,721	\$45,335,359
Adjusted Achieved Dollar Amount	\$216,072,692	\$365,193,676
Percentage of Small Business Goals Met	87%	87%

Source: FPDS-NG database -USPTO’s contracting actions as of 10-22-2018.

The Federal Acquisition Regulation (FAR)¹¹ requires agencies to certify each SBC’s small business status¹² prior to awarding the contract using SAM and DSBS:¹³

1. A qualifying SBC must be registered in SAM as a small business prior to the award of the set-aside contract.
2. An SBC that qualifies as an SBA-certified socially and disadvantaged business must also be registered in DSBS as an 8(a) Program participant prior to the award of the set-aside contract.

We searched the SAM and DSBS databases to determine whether USPTO contracting personnel certified SBC small business status prior to awarding set-aside contracts. Based on the 67 procurement files reviewed, we found 6 SBCs that were not eligible as small businesses prior to the contract award that USPTO included in its reported achieved small business procurement goals. Specifically, we found that USPTO processed 147 contracting actions, with a total value of more than \$77 million to SBCs who were not eligible. Among the FYs 2017 and 2018 SBCs listed in tables 2 and 3,

- three (3) SBCs had graduated from the 8(a) Program but still had the designation in USPTO files and awarded 8(a) Program contracts after the graduation date; and
- three (3) SBCs were not registered as a small business in SAM or DSBS, nor were they noted in USPTO procurement files. Tables 2 and 3 provide additional details.

¹¹ FAR subpart 19.3—Determination of Small Business Status for Small Business Programs; 19.301—Representations and Re-representations. The FAR is codified in Title 48 of the Code of Federal Regulations (C.F.R.).

¹² SBCs may register their businesses across seven small business categories: (1) 8(a) Program minority-owned business; (2) women-owned small business; (3) economically disadvantaged woman-owned small business; (4) small disadvantaged business enterprise; (5) veteran-owned small business; (6) service-disabled veteran-owned small business; and (7) small businesses located in a HUBZone.

¹³ DSBS is an SBA database that contracting officers use to identify potential small business SBCs, registered in SAM, for pending contracting opportunities.

Table 2. Ineligible SBCs for FY 2017

Small Business Concern (SBC)	Audit Exception	Type of Set-Aside Contracts Awarded	Number of Contracting Actions	Base and Exercised Options Contract Value
SBC #1	Not in 8(a) program	8(a) Sole-Source and 8(a) Completed	4	\$2,066,622
SBC #2	Not in 8(a) program	8(a) Sole-Source	1	\$674,818
SBC #3	Not in 8(a) program	8(a) Completed	5	\$220,926
SBC #4	Not in SAM or DSBS	8(a) Completed	37	\$23,411,079
SBC #5	Not in SAM or DSBS	8(a) Completed	21	\$5,177,444
SBC #6	Not in SAM or DSBS	8(a) Sole-Source	1	\$1,077,830
Total			69	\$32,628,721

Source: USPTO procurement files, SAM, and DSBS databases as of 7-11-2019.

Table 3. Ineligible SBCs for FY 2018

Small Business Concern (SBC)	Audit Exception	Type of Set-Aside Contracts Awarded	Number of Contracting Actions	Base and Exercised Options Contract Value
SBC #1	Not in 8(a) program	8(a) Sole-Source	1	\$1,080,183
SBC #2	Not in 8(a) program	8(a) Sole-Source	2	\$675,661
SBC #3	Not in 8(a) program	Set-Aside Category Not Entered	4	\$315,809
SBC #4	Not in SAM or DSBS	8(a) Completed	32	\$33,911,304
SBC #5	Not in SAM or DSBS	8(a) Completed	37	\$8,264,573
SBC #6	Not in SAM or DSBS	8(a) Sole-Source	2	\$1,087,830
Total			78	\$45,335,359

Source: USPTO procurement files, SAM, and DSBS databases as of 7-11-2019.

Without the ineligible SBC contract data from USPTO’s reported achieved small business procurement goals, USPTO did not meet its FY 2017 and FY 2018 goals. As noted earlier, we reviewed a judgmental sample of 67 files which was not a statistical representation of all awarded contracts for FY 2017 and 2018. Had we reviewed all 3,953 awarded contracts, the number of ineligible SBC contracts may have been larger.

We identified two reasons why USPTO erroneously included these SBCs when calculating awards for its FYs 2017 and 2018 goals. First, according to several USPTO senior contract specialists, the Office of Procurement certified small business status for new SBCs receiving a first-time contract award but did not recertify SBCs that had active or prior contracts with USPTO prior to a new award. Second, USPTO’s *PTAG* does not require the Office of

Procurement to certify SBC small business eligibility status prior to awarding contracts. Consequently, not only did USPTO inaccurately report its results but it also limited the opportunity for eligible SBCs to receive the awards.

II. USPTO Did Not Provide Small Businesses with Adequate Contract Award Opportunities

The Small Business Act¹⁴ requires agencies, when considering any small business contracts, to conduct market research to encourage small business participation.¹⁵ Agency personnel must document the results of the market research, including (1) all potential small business sources that were contacted and (2) any acquisition strategies used to enhance participation as prime contractors and subcontractors. To meet these requirements, USPTO must complete the Department's form CD-570, *Small Business Set-Aside Review*.¹⁶ If a contract is awarded to any contractor other than a small business or socioeconomic small business, USPTO must document the determination and submit the CD-570 form to the small business specialist for approval to proceed with an acquisition strategy outside of the small business program.

We found that USPTO has conducted market research to encourage small business and socioeconomic small business participation. However, among the 67 procurement files we judgmentally sampled for review, we found the following documentation issues:

- *Lack of documentation regarding other than small business contracts.* We found six (6) contracts awarded to other than small businesses, with a total value of more than \$413 million, that lacked justification of why contract opportunities were not offered to small businesses (see table 4 for additional details). For example, one SBC was awarded a contract valuing more than \$364 million without competing and without supporting market research documentation to document approval by the small business specialist.

¹⁴ 15 U.S.C. §§ 631–637.

¹⁵ Small Business Act, section 15(2)(A)–Marketing Research.

¹⁶ Form CD-570, *Small Business Set-Aside Review*, is completed by the contract specialist or contracting officer and approved by the small business specialist, Office of Small and Disadvantaged Business Utilization, and an SBA Procurement Center representative. See *PTAG* Part 4.1 Procedures, Part 6.1.1 Procedures: Alternative Competition Method, and Part 6.1.4(b) Socioeconomic Small Business Utilization Program.

Table 4. Other than Small Contracts Without Set-Aside Review Documentation

Small Business Concern (SBC)	Type of Extent Competed	Number of Contracting Actions	Base and Exercised Options Contract Value
SBC #1	Not Competed Under Simplified Acquisition Program	3	\$136,379
SBC #2	Full and Open Competition	14	\$20,603,449
SBC #3	Full and Open Competition	2	\$6,452,145
SBC #4	Full and Open Competition	12	\$6,334,913
SBC #5	Competed Under Simplified Acquisition Program	22	\$15,478,209
SBC #6	Not Competed	38	\$364,606,836
Total		91	\$413,611,931

Source: USPTO procurement files and FPDS-NG database as of 10-22-2018.

- Inadequate documentation regarding small business contracts.* We found that USPTO often did not adequately document acquisition strategies used to enhance participation of small business in their market research. Among the 67 procurement files in our judgmental sample, we found 36 contracts awarded to small businesses, with a total value of more than \$1.6 billion¹⁷ which lacked documentation of marketing research results (i.e., were missing the form CD-570). For example, one SBC was awarded a sole-source contract under the 8(a) Program—valued at more than \$57 million—without supporting market research documentation. In addition, the SBC’s 8(a) Program registration expired in 2012—making the SBC ineligible to receive an 8(a) Program contract at the time of award.

In surveys, USPTO senior contract specialists stated that there was insufficient coordination between the Office of Procurement and the small business specialist, as well as a lack of clear guidance on the management of small business contracts. As a result, senior contract specialists did not receive small business contracting goals timely or consistent with internal small business utilization training to improve market research and planning. Additionally, USPTO senior contract specialists stated that the CD-570 forms were not submitted to the small business specialist with enough reasonable time, or at all in some cases, to obtain a set-aside or non-set-aside determination. By not properly performing and documenting market research for each contract, small businesses could miss opportunities to contract with USPTO and, in turn, impact USPTO in meeting its small business utilization goals.

¹⁷ The total value of the contracts includes the base and option value. An *option* is a unilateral right in a contract for a specified time for which the government may elect to purchase additional supplies or services called for by the contract or may elect to extend the term of the contract.

III. USPTO Did Not Take Appropriate Actions to Meet Small Business Contracting Goals

Agencies must establish a plan for achieving goals to maximize opportunities for small business and socioeconomic SBCs, which include qualified HUBZone small businesses.¹⁸ Specifically, the Small Business Act requires that HUBZone small businesses participate in at least 3 percent of all contract awards each fiscal year.¹⁹ However, based on a review of USPTO’s *Small Business Award Goals and Attainment Reports*, we found that USPTO contracted with HUBZone businesses at a rate of less than 3 percent in FYs 2017 and 2018²⁰ (see table 5 for additional details).

Table 5. USPTO’s HUBZone Small Business Goal Achievements for FYs 2017 and 2018

	FY 2017	FY 2018
Available Small Business Dollar Amount	\$461,229,013	\$852,953,698
HUBZone Small Business Utilization Dollar Goal	\$13,836,870	\$25,588,611
USPTO Reported Achieved Dollar Amount	\$11,797,884	\$17,066,796
Percentage of HUBZone Small Business Goals Met	85%	67%

Source: FPDS-NG data and USPTO’s contracting actions as of 10-22-2018.

In interviews, USPTO personnel stated that there were not enough qualified HUBZone businesses to meet contracting goals. While noting this challenge, we found that USPTO did not include HUBZone SBCs in its FYs 2017–2018 2-year procurement forecast, planned marketing, or outreach activities. The *Commerce Acquisition Manual*²¹ requires operating units to use the Forecasting and Advanced Acquisition Planning System (FAAPS) for conducting effective advanced acquisition planning and forecasts of business opportunities made available to the public.²² Furthermore, FAAPS also helps Departmental agency acquisition offices standardize the planning process—and facilitate early communications with representatives of the small business program—to ensure all forecasting data is accurate and complete.

Instead of utilizing FAAPS, USPTO personnel used a less automated process that resulted in delays with compiling acquisition forecasting data. For instance, senior contract specialists stated that they were only provided a manually developed acquisition forecast spreadsheet that was “very convoluted, missing data, and difficult to comprehend.” Effective acquisition planning ensures that all identified acquisitions that (a) are unable to be set-aside for SBCs or (b) require further investigation, are identified early. This early identification better enables personnel to

¹⁸ Small Business Act, Section 15(B)—Achievement of Governmentwide Goals.

¹⁹ Small Business Act, Section 15(1)(A)(iii)—Governmentwide Goals.

²⁰ In FYs 2017 and 2018, USPTO HUBZone Small Business achievement was 2.56 percent and 2 percent, respectively.

²¹ DOC, April 2, 2010. *Commerce Acquisition Manual—Acquisition Planning*, CAM 1307.1. Washington, DC: DOC.

²² The FAAPS is a web-based system that contains the data fields required to develop and effectively communicate a business opportunities forecast to stakeholders, including the public.

conduct thorough market research that supports a set-aside or non-set-aside determination for SBCs (such as HUBZone businesses, for example).

Recommendations

We recommend that the Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office direct the Director of the Office of Procurement to do the following:

1. Ensure contract specialists verify small business eligibility prior to awarding small business contracts.
2. Ensure contract specialists perform and appropriately document small business set-aside reviews.
3. Ensure HUBZone small business consideration is included in its annual acquisition forecasting activities and marketing efforts to maximize contracting opportunities.
4. Ensure the Office of Procurement uses FAAPS and establishes clear lines of communication between the Office of Procurement, small business specialists, and contracting specialists for all procurement requests.

Summary of Agency Response and BMC Comments

We received USPTO's response to our draft report on July 13, 2020. USPTO generally concurred with all four of our report recommendations and noted actions it has taken and will take to address them. USPTO also provided comments that we either (1) addressed in this final report, as we deemed necessary or (2) provided further explanations in this section. We have included USPTO's complete response and technical comments to our draft report in appendix B.

Agency Response 1. USPTO stated it is not legally exempt from any of the small business utilization requirements.

BMC Response 1. USPTO management represented in interviews that the USPTO possess its own procurement authority and does not necessarily follow the Department of Commerce procurement procedures. Moreover, procurement staff did not display an understanding of all applicable small business guidelines. For example, some staff did not acknowledge having any interaction with the small business specialist or the Department's Office of Small and Disadvantaged Business Utilization regarding awarded small business procurements.

Agency Response 2. USPTO noted that it generally concurs with recommendation 1 and plans to take steps to verify small business eligibility when the quote or proposal is received. Additionally, USPTO expressed inconsistencies concerning finding I of the report in regards to (1) the amount of available small business dollars, (2) small business goal achievement amounts for FY 2017 and FY 2018, and (3) the PTAG does not exempt USPTO from certifying SBC eligibility.

BMC Response 2. We disagree with the information provided by USPTO because, per the FPDS-NG reports we reviewed as of 10/28/2018, in 2017 and 2018 USPTO awarded 3,953 contracts—valued at more than \$1.43 billion—to businesses they designated as small. The contract number (2,446 contracts) that USPTO is referencing is incorrect. Based on the small business goaling report for FYs 2017 and 2018, USPTO awarded 2,567 contracts. The contract dollars that USPTO is referencing (\$852 million) is only for FY 2018. (See "FPDS-NG SB Goaling Report" worksheet for additional details.) We disagree with the USPTO recalculations of the small business achievement goals because the basis for the recalculation is a result of USPTO indicating that 5 of the 6 vendors deemed as ineligible per the draft report are eligible based on USPTO data analysis of electronic data and not on the physical files reviewed by our auditors. At the time of the contract award, the vendors identified in the report findings were not registered as an SBC.

Furthermore, our auditors made two requests to the Office of Procurement's Policy Department to obtain access to the electronic files to obtain data to clarify physical file, reporting, and other related discrepancies. Due to USPTO's lack of organization, we were not provided any access to the system that houses the electronic files as of the end data of audit fieldwork and, therefore, could not verify any addition data from USPTO systems.

Our team requested access to the computerized procurement systems and electronic files early in the project, but USPTO stated numerous grounds for delaying and ultimately never provided access. During the fieldwork phase, we brought up this matter with the small business specialist

on numerous occasions. The day before the small business specialist left for a 2-week vacation and just a few days shy of the end of fieldwork deadline, the small business specialist indicated that the Policy Department would provide access if we completed security forms and processing—which would take approximately 1 month.

Agency Response 3. The USPTO only has one procurement office. We recommend revising the text to read “between various personnel within the Office of Procurement.”

BMC Response 3. “Various offices includes the USPTO Office of Procurement, the Department’s Office of Acquisition Management, and the Department’s Office of Small and Disadvantaged Business Utilization.”

Agency Response 4. USPTO indicated that the records it pulled from FPDS-NG showed the available small business dollar amounts for FY 2017 were \$840 million and for FY 2018 were \$870 million.

BMC Response 4. We disagree with the USPTO FPDS-NG data presented because as of October 22, 2018, the FPDS-NG data reported and provided to our auditors by USPTO reflected \$461 million and \$853 million available small business dollars for 2017 and 2018, respectively. Our numbers are consistent with the small business goaling report. (See “FPDS-NG SB Goaling Report” worksheet for additional details.)

Agency Response 5. USPTO noted that there was an 87 percent small business goal achievement in FYs 2017 and 2018. However, based on their recalculations USPTO stated it had a 92 percent goal achievement in FY 2017 and a 98 percent goal achievement for FY 2018.

BMC Response 5. We disagree with the USPTO recalculations of the small business achievement goals because the basis for the recalculation is FPDS-NG reports pulled by USPTO after the end of fieldwork and not the FPDS-NG report provided to our staff as of October 22, 2018. Additionally, USPTO included in their numbers, five (5) of the six (6) vendors deemed as ineligible per the draft report that they asserted were eligible based on their data analysis of electronic data and not on the physical files reviewed by our auditors. At the time of the contract award, the vendors identified in the report findings were not registered as an SBC. Furthermore, our auditors made two requests to the Office of Procurement’s Policy Department to obtain access to the electronic files to obtain data to clarify physical file, reporting and other related discrepancies. Due to USPTO’s lack of organization, we were not provided any access to the system that houses the electronic files as of the end data of audit fieldwork and, therefore, could not verify any addition data from USPTO systems. Our team requested access to the computerized procurement systems and electronic files early in the project, but USPTO stated numerous grounds for delaying and ultimately never provided access. During the fieldwork phase, we brought up this matter with the small business specialist on numerous occasions. The day before the small business specialist left for a 2-week vacation and just a few days shy of the end of fieldwork deadline, the small business specialist indicated that the Policy Department would provide access if we completed security forms and processing—which would take approximately 1 month.

Agency Response 6. USPTO noted it concurs with recommendation 2 and stated it would ensure contract specialists verify small business eligibility prior to awarding the contract. USPTO also noted that it would revise policy to require confirmation of business size in the SAM. In regards to section 1, our findings were supported with (1) the FPDS-NG report that reflected \$461 million and \$853 million available small business dollars for 2017 and 2018, respectively, (2) our review of the small business databases to determine SBC eligibility at the time the contract was awarded, and (3) our review of the PTAG, as it did not address nor require certifying SBC eligibility.

BMC Response 6. To clarify, based on surveys conducted with the USPTO contract specialist, small business representation and certification is verified for new awards made to vendors, but for new awards made to familiar vendors recertification is not always done because there is often not enough lead-time to perform this task and meet award deadlines. Further, USPTO management indicated during interviews that most of the products and services procured by USPTO are only provided by a limited number of vendors which typically encourages them to provide awards to those same vendors. Unfortunately, the files reviewed typically did not contain justification or market research documenting the challenges faced. Although the PTAG does not provide an exemption from certifying SBC's from eligibility, it should address the need for acquisition staff to ensure that vendor status is checked in more than one source and documented in the file as a best practice.

Agency Response 7. USPTO noted that six contracts—with a total value of \$413 million—were awarded to other than small businesses without proper documentation, and that CD-570 forms were not used when required based on their Small Business Set-Aside Review process. They further indicated that at USPTO—and in accordance with USPTO PM 2018-02, *Small Business Set-Aside Review Process*—a CD-570 form is not required for orders against General Services Administration (GSA) schedule contracts or orders/calls against an established indefinite delivery vehicle.

BMC Response 7. As USPTO stated, it does not have access to the first three vendor files to address the report determinations because of the pandemic, but they should have reasonable access to electronic data to analyze the vendor status. Lack of documentation, whether electronic or hard copy, seems to be an inherit problem at the agency and impacted the results of our audit. If additional files were tested, we are certain that additional instances of missing documentation would exist. Regarding the contract awarded by the Library of Congress for which USPTO had an order for, we only reviewed data at the time of the audit which did not clearly identify the contract as being awarded by another agency. Further evaluation of the contract file or other electronic data not previously provided to our auditors would need to be evaluated to determine the contract status. The documentation available at the time of the audit for SBC #5 did not clearly identify the award as an order against a GSA schedule and we did not have any additional electronic data that USPTO may have used to conduct its analysis. For SBC #6, the dollar amount indicated in the report is the FPDS-NG data as of October 22, 2018, and may vary depending on the date USPTO pulled their data.

Agency Response 8. USPTO noted the report referenced 36 contracts that were missing CD-570 forms. However, they indicated that out of the 36 contracts, four (4) were orders against GSA schedules, and five (5) were orders against a USPTO indefinite delivery vehicle. They also

indicated that per PM 2018-02, a CD-570 form is not required for these awards and that the remaining 27 awards are hard copy files that USPTO is unable to access due to the pandemic, and, therefore, could not analyze them to validate the findings in the report.

BMC Response 8. As indicated in our report, at the time of the audit the files we reviewed did not contain documentation justifying the awards made nor were they clearly identified as orders against GSA schedules. We did not have any additional electronic data that USPTO may have used to conduct their analysis during the pandemic.

Agency Response 9. USPTO requested the specific contract number for the sole source 8(a) contract valued at more than \$57 million that was awarded after the vendor's program expiration in 2012.

BMC Response 9. Per USPTO's request, on June 12, 2020, we provided USPTO with all the contract procurement instrument identifiers regarding the ineligible vendors, to include the contracts missing set-aside review documentation identified during the audit.

Agency Response 10. USPTO noted that it concurs with recommendation 2 and plans to take steps to require electronic reviews of the set-aside form (CD-570) in eAcquisitions. In addition, USPTO expressed inconsistencies concerning finding II of the report in regards to the six contracts that were awarded without proper documentation and that current policy states the CD-570 form is not required for orders against GSA schedule contracts or indefinite delivery vehicles.

BMC Response 10. We disagree with USPTO's statement that only SBC #5 is an ineligible vendor, because the data to support the eligibility of vendor numbers 1, 2, 3, 4, and 6 are based on their electronic file data which was not made available to us during the time of audit fieldwork. Therefore, the results of our audit report relating to vendor eligibility were largely dependent on the availability of award justification documents, market research, acquisition approvals and other information located in hard copy files and/or SAM and DSBS reports pulled as of the end date of fieldwork. The files we reviewed did not appear to be orders against existing contracts, GSA schedules, or other procurement instruments that would not require evidence of completed reviews of eligibility documentation. We cannot speak to the integrity of any files located at USPTO while not in our possession as USPTO had access to the files during and after the audit fieldwork phase.

Agency Response 11. USPTO noted that it concurs with recommendations 3 and 4. Additionally, USPTO noted it plans to include HUBZones in their annual acquisitions planning process and will work to improve communication and processes. However, USPTO noted it is not required to use FAAPS based on an email received from the Department on June 3, 2014, and that USPTO will initiate a comparable tool for acquisition forecasting in FY 2021.

BMC Response 11. USPTO noted during the pre-exit conference that it found an email dated back in 2014 that stated they were exempt from using FAAPS. However, this was not reflected in any USPTO guidance or policy. As stated in our report, the Department's *Commerce Acquisition Manual* 1307.1, published in September 2017, requires its operating units to use the system for acquisition planning.

Appendix A: Objectives, Scope, and Methodology

The objectives of this audit were to determine whether USPTO (1) achieved its small business utilization goals; (2) contracting officials provided small businesses with adequate contract award opportunities; and (3) took appropriate actions to ensure they met small business contracting goals.

Our scope included procurement files related to small business utilization performance during the period of October 1, 2016, through September 30, 2018 (i.e., the beginning of FY 2017 through the end of FY 2018).

To accomplish the objective, we performed the following:

- Reviewed regulations and policies that govern the small business program, such as the following:
 - Small Business Act (15 USC 631–637)
 - Federal Acquisition Regulation Part 19, *Small Business Programs*
 - Patent and Trademark Office Efficiency Act (Pub L. 106-113)
 - USPTO’s *Patent and Trademark Acquisition Guidelines*, dated October 3, 2013
 - 13 C.F.R.125, *Government Contracting Programs*, Section 125.2
- Reviewed the Government Accountability Office’s *Standards for Internal Control in the Federal Government*, dated September 10, 2014, for best practice standards and management control standards.
- Conducted and reviewed senior contract specialist surveys to determine contracting processes, training programs related to the small business program, and the FPDS-NG database.
- Conducted interviews to obtain an understanding of USPTO’s procurement process with key officials such as the Director of Office of Procurement; Chief of the Chief Information Officer (CIO) Systems and Services Division; Chief of Patents, Systems, and Software Division; Chief of Trademark and Corporate Division; Chief of Policy, Program, and Compliance Division; Director of the Office of Small and Disadvantaged Business Utilization; the small business specialist; and senior contract specialists.
- Reviewed SBA’s *FY 2019 Federal Small Business Goaling Guidelines*, dated August 2018, to understand the small business goaling process and report.
- Reviewed the Office of Federal Procurement Policy’s *FPDS-NG User Manual* to understand the various goaling elements such as types of set-asides, contracting officer business size determinations, base and exercised options value, and small business eligible dollars.
- Analyzed USPTO procurement files and compared the procurement data to the FPDS-NG datasets for FYs 2017 and 2018.

- Analyzed FPDS-NG data sets to determine the number of awarded contracts and dollar amounts for FYs 2017 and 2018.
- Obtained and reviewed information for the work performed, with Oversight provided by the OIG

To determine the sample, we extracted and reviewed data as of October 22, 2018, from Momentum, USPTO's accounting system, and FPDS-NG. Initially, we statistically selected 648 awarded contract procurement files. During the planning phase, USPTO was unable to locate all of the files or some files were incomplete. As a result, we adjusted the sample size to 476 awarded contract procurement files. However, USPTO was still unable to locate all the files. As such, we judgmentally selected 67 procurement files to review SBC small business status certification, contract procurement justifications and small business set-aside review justifications, and HUBZone small business requirement considerations.

Furthermore, we obtained an understanding of the internal controls within the context of the audit objective by interviewing USPTO officials and reviewing documentation for evidence of internal controls. While we identified and reported on internal controls deficiencies, no incidents of fraud, illegal acts, violations, or abuse were detected within the audit. We relied on computer-processed data from acquisition and contracting databases and assessed its reliability by comparing the data with other available supporting documents to determine data consistency and reasonableness. We determined that the data were sufficiently reliable for the purposes of this report.

We conducted the review from August 2018 through November 2019 under the authority of the Inspector General Act of 1978, as amended (5 U.S.C. App.), and Department Organization Order 10-13, dated April 26, 2013. We performed the fieldwork at USPTO offices in Alexandria, Virginia.

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

Appendix B: Agency Response

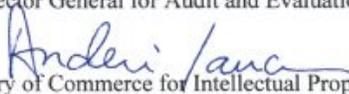


UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

JUL 11 2020

MEMORANDUM FOR: Frederick J. Meny, Jr.
Assistant Inspector General for Audit and Evaluation

FROM: Andrei Iancu 
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

SUBJECT: Response to Draft Report: *USPTO Needs to Improve Its Small
Business Contracting Practices (June 2020)*

We thank the Office of Inspector General (OIG) for its efforts in reviewing the small business contracting practices at the United States Patent and Trademark Office (USPTO). The USPTO values small business innovation, which fuels our economy. We are committed to contracting with small businesses when they are positioned to help the agency fulfill its mission. Pursuant to the recommendations in the report, the USPTO will institute plans of action to improve compliance with the small business acquisition regulations and policies, as outlined in this response.

In reviewing the report, the USPTO identified certain inconsistencies in some of the data calculations. In most instances, it appears that these inconsistencies stem from the criteria used in the audit analysis to classify small businesses, which did not always align with the referenced Federal Acquisition Regulation (FAR) procedures for classifying small businesses. Accordingly, the report is likely understating the USPTO's small business results in some instances and overstating the level of reporting errors and incompleteness in the USPTO's records. Unfortunately, we were unable to conduct a thorough analysis of our physical records to validate all of the report's findings during the time provided for our response because of restrictions on physical access to the USPTO headquarters as a result of the COVID-19 outbreak.

However, we are providing—via a separate attachment to this response—technical comments regarding the report's calculations based on analyses we were able to conduct using information available electronically and in government-wide systems.

The report states that the USPTO overstated its small business achievement by \$78 million between FY 2017 and FY 2018 because it awarded contracts to six ineligible small business concerns (SBC). After carefully reviewing these findings, and with the benefit of supplemental information provided by the OIG, the USPTO believes that five of these six SBCs were in fact

eligible at the relevant times. This assessment is based on provisions of the FAR that state that contracting officers should rely on the small business representations made at the contract level. Excluding these five SBCs from the calculation, the amount of the USPTO's overstatement drops to under \$13.5 million over the two-year period. The report indicates that the misclassifications in the USPTO's records stemmed from USPTO business processes that did not align with relevant FAR procedures for certifying SBC status. However, consistent with the FAR, the USPTO's acquisition policies and business processes require certification of SBC status at the time the proposal for the master contract is received. Our analysis of both the FAR requirements and the accounting of small business activities contained in the report is provided in the attached detailed technical comments.

The USPTO also identified other inconsistencies in the draft report. In one instance, the report indicates that certain USPTO records were incomplete due to missing documentation, when, in many cases, that additional documentation was not required for the contract vehicles being used. In other instances, the report indicates that the USPTO failed to perform certain reviews at specific points in the acquisition process, yet these reviews are not required by the FAR. We have detailed these issues in the attached technical comments.

Notwithstanding the issues described above, as described below, the USPTO generally agrees with the report's recommendations, which align with improvements already in process at the USPTO.

Response to Recommendations

(1) IG recommendation that the Director of the Office of Procurement ensure that: Contract specialists verify small business eligibility prior to awarding small business contracts.

USPTO response: The USPTO generally concurs with this recommendation and will continue to accomplish it by following FAR 19.301-1(b) and 19.301-1(f), which directs that verification of small business eligibility should occur when the quote/proposal is received.

Accordingly, the USPTO will take additional steps to ensure that contract specialists verify small business eligibility when the quote or proposal is received. The Director of Procurement will also revise Procurement Memorandum (PM) 2014-04, *Acquisition File Documentation (AFD)*, to require confirmation of business size in the System for Award Management when the quote or proposal is received.

(2) IG recommendation that the Director of the Office of Procurement ensure that: Contract specialists perform and appropriately document small business set-aside reviews.

USPTO response: The USPTO concurs with this recommendation. The USPTO will revise PM 2018-02, *Small Business Set-Aside Review Process*, to require electronic reviews of the Department of Commerce's CD-570 Small Business Set-Aside form in eAcquisitions for all actions required by PM 2018-02.

(3) IG recommendation that the Director of the Office of Procurement will ensure that:
Historically Underutilized Business Zones small business consideration is included in its annual acquisition forecasting activities and marketing efforts to maximize contracting opportunities.

USPTO response: The USPTO concurs with this recommendation and will address it as part of the Office of Procurement's annual acquisition planning process.

The contract specialists will work with the small business specialist to include Historically Underutilized Business Zones small business concerns as part of their market research activities.

(4) IG recommendation that the Director of the Office of Procurement will ensure that:
The Office of Procurement uses the Forecasting and Advanced Acquisition Planning System and establishes clear lines of communication between the Office of Procurement, small business specialists, and contracting specialists for all procurement requests.

USPTO response: The USPTO generally concurs with this recommendation and will work within existing systems and organizational structures to make the needed improvements.

The USPTO is not required to use the Forecasting and Advanced Acquisition Planning System (FAAPS). However, we have created a comparable USPTO tool for acquisition forecasting that will be implemented in FY 2021.

All of the USPTO's small business specialist and contract specialists work within the Office of Procurement and report to the Procurement Director. As such, to implement this recommendation, the Procurement Director will improve communication and processes among the small business specialist and contract specialists.

Conclusion

In closing, we thank the Assistant Inspector General for Audit and Evaluation for providing us with this report. The USPTO and the Office of Procurement have made a commitment to improving our small business contracting practices. The USPTO is confident in our ability to implement the recommendations, as detailed above, in a timely manner.

United States Patent and Trademark Office
Technical Comments for Draft Report:
USPTO Needs to Improve Its Small Business Contracting Practices (June 2020)

Technical Comments:

See attached.

USPTO Technical Comments to OIG Draft Report:
USPTO Needs to Improve Its Small Business Contracting Practices (June 2020)

- 1) In paragraph 2 of the Introduction (page 1), the report states, “The Department sets the sub-goals for the U.S. Patent and Trademark Office (USPTO), although USPTO is legally exempt from some small business utilization requirements.”
 - a. The USPTO is not legally exempt from any of the small business utilization requirements.
- 2) In paragraph 5 of the Introduction (page 2), the report states, “For fiscal years (FYs) 2017 and 2018, USPTO awarded 3,953 contracts—valued at more than \$1.43 billion—to small businesses ... ”
 - a. According to the Federal Procurement Data System—Next Generation (FPDS-NG), in FY 2017 and FY 2018, the USPTO awarded 3,769 contracts with a cumulative value of \$1.7 billion.
 - b. Of that amount, 2,446 contracts valued at \$852 million were awarded to small businesses.
- 3) On page 3, the report mentions “insufficient coordination between various procurement offices.”
 - a. The USPTO only has one procurement office. We recommend revising the text to read “between various personnel within the Office of Procurement.”
- 4) On page 3 under the section entitled “USPTO Did Not Meet Its Small Business Utilization Goals,” the report states, “For FYs 2017 and 2018, USPTO’s available small business dollar amounts were approximately \$461 million and \$853 million ... ”
 - a. According to FPDS-NG, the available small business dollar amounts for FY 2017 were \$840 million and for FY 2018 were \$870 million.
- 5) On page 4, in table 1, the report indicates an 87% small business goal achievement in FY 2017 and FY 2018. Based on the USPTO’s analysis provided in item 6 below, the USPTO had a 92% goal achievement in FY 2017 and a 98% goal achievement in FY 2018. Below, please see an updated table that incorporates the USPTO’s analysis.

	FY 2017	FY 2018
Available Small Business Dollar Amount	\$839,778,210	\$870,205,166
Small Business Utilization Dollar Goal	\$453,480,234	\$426,400,531
USPTO Reported Achieved Dollar Amount	\$424,604,235	\$427,155,507
Ineligible SBC Contract Dollar Amount (based on a judgmental sample of 67 procurement files)	\$5,177,444	\$8,264,573

**USPTO Technical Comments to OIG Draft Report:
USPTO Needs to Improve Its Small Business Contracting Practices (June 2020)**

Adjusted Achieved Dollar Amount	\$419,426,791	\$418,890,934
Percentage of Small Business Goals Met	92%	98%

Source: FPDS-NG database, Standard Small Business Goaling Report—USPTO’s contracting actions as of June 18, 2020.

- 6) Starting on page 3 and continuing through page 5 under the section entitled “USPTO Did Not Meet Its Small Business Utilization Goals,” the report states that the USPTO inaccurately reported its small business achievement because it awarded contracts to six ineligible small business concerns (SBC) for a total overstated amount of \$32.6 million in FY 2017 and \$45.3 million in FY 2018. The USPTO disagrees with this assessment. Based on the USPTO’s findings below, only \$5.1 million for SBC #5 in FY 2017 and \$8.2 million for SBC #5 in FY 2018 should be considered ineligible for the purposes of determining the USPTO’s small business goal achievement.
- a. Since the report did not provide identifying information about the six SBCs, the USPTO asked for and received supplemental information that identified the vendor names and contract numbers associated with each of the SBCs on June 11, 2020.
 - b. The contracts associated with the six SBCs used to establish the overstated amount for FY 2017 were the same six contracts and SBCs used to establish the overstated amount in FY 2018. Therefore, the USPTO only conducted an analysis of the FY 2017 actions, since the findings for FY 2017 also apply to FY 2018.
 - c. The USPTO’s analysis of that supplemental information resulted in the following findings:
 - i. SBC #1 DOC44PAPT1711001 with Net America was awarded on October 21, 2016, under NAICS code 541512 against GSA schedule GS06F0862Z. According to FAR 8.405-5(b), “an ordering agency may only take credit if the awardee meets a size standard that corresponds to the North American Industry Classification System code assigned to the order in accordance with 19.102(b)(3). Ordering activities should rely on the small business representations made by schedule contractors at the contract level.” According to FPDS-NG, GS06F0862Z was awarded on July 31, 2011, and allows for orders through August 30, 2021. A search of SBA’s Dynamic Small Business Search (DSBS) shows that Net America was in the 8(a) program for NAICS 541512 from January 23, 2003, through February 24, 2014. Therefore, since GS06F0862Z was appropriately coded as an 8(a) award, and the USPTO’s order was issued during the allowable ordering period, the USPTO’s order is also properly coded and should not be considered as an ineligible award.
 - ii. SBC #2 DOC44PAPT1711170 with MiraCorp was awarded on August 24, 2017, under NAICS code 541611 against GSA schedule GS10F233AA.

USPTO Technical Comments to OIG Draft Report:
USPTO Needs to Improve Its Small Business Contracting Practices (June 2020)

The award with MiraCorp meets the criteria of FAR 8.405-5(b) because the vendor was part of the 8(a) program for NAICS code 541611 when GS10F233AA was awarded on August 23, 2013. A search of SBA's DSBS shows that the vendor entered the 8(a) program on February 22, 2008, and exited on February 22, 2017. Therefore, since GS10F233AA was appropriately coded as an 8(a) award, and the USPTO's order was issued during the allowable ordering period, the USPTO's order is also properly coded and should not be considered as an ineligible award.

- iii. SBC #3 and SBC #4 are both for contract DOC50PAPT0701001 but listed separately as being awarded to AS&D and to ARSC Management Services Inc. The contract was awarded as a competitive 8(a) under NAICS code 561210 on March 28, 2007. According to the System for Award Management (SAM), both AS&D and ARSC are Alaskan Native Corporations, and AS&D is an 8(a) for the specified NAICS code, with an 8(a) program entrance date of January 23, 2003, and an exit date of January 23, 2012. Since this award was made during their time within the program, it should not be considered an ineligible award.
 - iv. SBC #6 DOC50PAPT1200062 with Digital Mind Trust was awarded on April 17, 2015, as an 8(a) sole source. According to SAM, Digital Mind Trust is listed as an 8(a) joint venture under its DUNS number 079346575. SAM lists its entrance date into the 8(a) program as April 11, 2014, with an exit date of May 15, 2021. Since this award was made during Digital Mind Trust's time within the program, this award should not be considered an ineligible award.
- 7) On page 4, the report states that agencies need to confirm each SBC's small business status prior to awarding a contract using SAM and DSBS.
- a. In accordance with FAR 19.301-1(b), verification of small business eligibility should be completed at the time of written representation instead of at the time of award.
 - b. The FAR does not require an agency to confirm an SBC's small business status using DSBS.
- 8) On page 5, in the last paragraph, the report indicates two reasons why ineligible awards were included in the USPTO's FY 2017 and FY 2018 calculations: 1) SBCs were not recertified if they had active or prior awards with the USPTO, and 2) the *Patent and Trademark Office Acquisition Guidelines* (PTAG) does not require the Office of Procurement to certify SBC small business eligibility prior to an award.
- a. In accordance with FAR 16.505(b)(2)(ii)(D)(9) and FAR 8.405-5(b), contracting officers should rely on the small business representations made at the contract level. Therefore, orders against an existing active vehicle do not require the contracting officer to recertify the SBC's small business eligibility prior to issuing an order.

USPTO Technical Comments to OIG Draft Report:
USPTO Needs to Improve Its Small Business Contracting Practices (June 2020)

- b. The PTAG does not provide any exemption from certifying an SBC's small business eligibility prior to an award.
- 9) On page 6, in the bulleted text, the report indicates that six contracts, with a total value of \$413 million, were awarded to other than small businesses without proper documentation. Also on page 6, in the first paragraph, the report states that the "USPTO must complete the Department's form CD-570, *Small Business Set-Aside Review*." However, at the USPTO, and in accordance with USPTO PM 2018-02, *Small Business Set-Aside Review Process*, a CD-570 form is not required for orders against GSA Schedule Contracts or orders/calls against an established Indefinite Delivery Vehicle (IDV).
- a. The USPTO does not have access to the hard copy files for SBCs #1, #2, and #3 due to the pandemic, and, therefore, is unable to analyze the files at this time to validate the report's findings.
 - b. SBC #4 LC14C7122 was awarded on September 16, 2013, with a cumulative value of \$5 million instead of the \$6.3 million stated in table 4 in the report. LC14C7122 was awarded by the Library of Congress for its FedLinks IDV. Since LC14C7122 is not a USPTO contract, we are not responsible for any documentation required to support awarding to an other than small business. If this is referring to a USPTO order against LC14C7122, per PM 2018-02, a CD-570 form is not required for an order against an established IDV.
 - c. SBC #5 DOC45PAPT1500017 was awarded on May 7, 2015, against GSA Schedule GS35F0009U. Per PM 2018-02, a CD-570 form is not required for an order against a GSA Schedule.
 - d. SBC #6 DOC45PAPT1720005 was awarded on February 25, 2017, and, according to FPDS-NG, was valued at \$125 million instead of the \$364.6 million stated in table 4 of the report.
- 10) On page 7, the report references 36 contracts that were missing CD-570 forms.
- a. Out of the 36 contracts, 4 were orders against GSA Schedules, and 5 were orders against a USPTO IDV. Per PM 2018-02, a CD-570 form is not required for these awards.
 - b. The remaining 27 awards are hard copy files that the USPTO is unable to access due to the pandemic, and, therefore, cannot analyze at this time to validate the findings in the report.
- 11) On page 7, the report references a sole source 8(a) contract valued at more than \$57 million that was awarded after the vendor's program expiration in 2012.
- a. The USPTO requests this specific contract number so we can validate this finding.
- 12) On page 8, the report references the Commerce Acquisition Manual's requirement to use the Forecasting and Advanced Acquisition Planning System (FAAPS).

USPTO Technical Comments to OIG Draft Report:
USPTO Needs to Improve Its Small Business Contracting Practices (June 2020)

- a. In accordance with an email received from the Department of Commerce dated June 3, 2014, the USPTO is not required to use FAAPS.
- 13) On page 10, the report references interviews with the Chief Information Officer.
- a. The USPTO believes this should read, “Chief of the Chief Information Officer (CIO) Systems and Services Division.”