



# Patent and Trademark Office Acquisition Guidelines (PTAG)

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Adopted March 10, 2003



# Background

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- PTO Efficiency Act signed March 29, 2000.
- Granted USPTO the authority to make purchases and enter into contracts without regard to FPAS (FAR Parts 6 and 15 in particular).



# Background (con't)

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- Team formed to research best practices; draft new regulations and guidelines within confines of the Efficiency Act; extensive agency review conducted.
- PTAG published in Federal Register – no comments received.



# FAR vs. PTAG

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- FAR issued by the FAR Council pursuant to FPAS authority. As PTO is exempt from FPAS, PTO is exempt from the FAR.
- Although not required to follow the FAR in general, PTO still subject to other statutes and Executive Orders (OFPP Act, Small Business Act, Procurement Integrity Act, Service Contract Act, OFPP policies).



# PTAG Guiding Principles

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- FAR is guidance
- FAR ensures procurements are made fairly and in the best interests of the Government
- PTAG is guidance
- PTAG designed for flexibility & innovation
- Conduct procurements within the PTAG guidelines; inform vendors of the rules; comply with applicable statutes, regulations; Executive Orders.



# PTAG Highlights

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- “Full & Open Competition” (as defined in the FAR) – gone
- Replace with “maximum reasonable competition” & “fairness”
- Competition threshold increased to \$5000
- Simplified Acquisition Threshold for Commercial Items increased to \$10M (example, FAR Part 12.6 – streamlined solicitation for commercial items)



# PTAG Highlights (con't)

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- As an integral part of achieving “maximum reasonable competition” and flexibility in contracting, sole source procurements are allowed without regard to CICA.
- However, USPTO policy requires Justification and Approvals as follows:
  - ⊗ up to \$1M – Contracting Officer
  - ⊗ up to \$10M – Director, Office of Procurement
  - ⊗ over \$10M – Agency Competition Advocate



# PTAG Highlights (con't)

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- Alternative Streamlined Contracting Approach
- Unpriced options allowed w/o further competition
- PTO exempt from GPO use for printing requirements – first award under this authority this month





# What Hasn't Changed

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- USPTO still subject to OFPP Act & Small Business Act - must still synopsise
- Small business set-asides still required per the Small Business Act.
  - \$2500 - \$100,000 set aside for small businesses
  - 8(a) program –continue to use where appropriate
- USPTO still subject to bid protests (GAO & Court of Federal Claims)



# Alternative Streamlined Contracting Approach

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- Use of Project Team to conduct entire procurement
- High level solicitation document – limited proposals sought
- Establishing a pre-set number for the competitive range with only the most highly rated
- Issue detailed Statement of Need and seek complete offer
- Conducting negotiations only where practical
- No common cut-off date for negotiations



# Alternative Streamlined Contracting Procedure (con't)

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- Conduct negotiations only with the most highly rated offeror.
- Negotiations with the next highest ranked only if unable to reach agreement with the most highly ranked offeror.
- If agreement not reached, reopen negotiations or cancel solicitation.



# Use of PTAG

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- Refer to PTAG (web link) in all solicitations using the alternative streamlined acquisition procedures
- Need to standardize solicitation language (reference to PTAG, exemption from FAR part 15, etc.)
- Be creative!
- Flexibility = PTAG
- Questions?



# FAQ

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- Q. Are purchase card levels automatically raised to \$5000?
- A. Yes & No. Although the authority to raise the purchase card threshold to \$5000 may be issued immediately by the HCO, training requirements are issued by the Agency's Senior Procurement Executive. The Office of Procurement will seek waivers of the training requirements.



# FAQ (con't)

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- Q. Will we have to set-aside purchases between \$2500 - \$5000?
- A. Yes. We are not exempt from the Small Business Act which requires that we set-aside purchases between \$2500 - \$100,000.
- Q. If we're exempt from FAR part 15, must we give debriefings?
- A. No, but it's advisable in light of protest timing issues and our policy to be open with our vendors.



# FAQ (con't)

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- Q. Are on-going procurements affected?
- A. No. OGC advice is that solicitations inform offerors of the specific rules which will affect the particular procurement. Any changes to on-going procurements will require amendments.
- Q. Are GSA Schedule Orders/Procurements affected?
- A. No. We must comply with FAR 8.4 and GSA's rules for ordering from the MAS Schedule.



# FAQ (con't)

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- Q. Are we subject to the Uniform Contract Format?
- A. No, but existing procurement tools, i.e. Procurement Desktop, make changes impractical.
  
- Q. How does the new OMB Cir. A-76 affect USPTO's use of PTAG?
- A. Contracts awarded pursuant to OMB Cir. A-76 must follow the FAR.