



Report In Brief

DECEMBER 3, 2014

Background

For fiscal year (FY) 2012, the U.S. Patent and Trademark Office (USPTO) awarded 416 time-and-materials (T&M) and labor-hour (LH) contracts (e.g., contracts and task orders) with a total obligated value of approximately \$129 million. These contract types require contractors to provide their best efforts, up to the maximum number of hours authorized, to accomplish contract objectives. Each hour of work authorizes a contractor to charge the government an established labor rate, which includes profit. T&M/LH contracts are considered high risk because the government assumes the risk for cost overruns.

Although USPTO has authority to make purchases and enter into contracts with certain exemptions from the Federal Property and Administrative Services Act of 1949 and Competition in Contracting Act of 1984, it is still subject to several laws such as the Office of Federal Procurement Policy Act, Small Business Act, Service Contract Act, and Procurement Integrity Act.

Why We Did This Review

Since 2009, the government has increasingly regulated contracts other than firm fixed price contracts. A Presidential Memorandum on Government Contracting, issued March 4, 2009, emphasized the importance of agencies becoming more fiscally responsible in their contract actions by governing the appropriate use and oversight of all contract types and cutting contract costs. In July 2009, the Office of Management and Budget (OMB) directed agencies to reduce the use of high-risk contracts, which include cost-reimbursement and T&M/LH contract types. Out of USPTO's 416 T&M/LH contracts, we reviewed a judgmental sample of 28 contracts—22 task orders and 6 stand-alone contracts, with a total expended value of approximately \$247 million—to determine whether USPTO properly awarded and administered these contracts.

U.S. PATENT AND TRADEMARK OFFICE

The U.S. Patent and Trademark Office's Awarding and Administering of Time-and-Materials and Labor-Hour Contracts Needs Improvement

OIG-15-012-A

WHAT WE FOUND

We determined that contracting and program officials did not follow best practices to award and administer T&M/LH contracts and task orders for work performed. These conditions occurred because contracting and program officials did not follow Office of Management and Budget memorandums, Federal Acquisition Regulation (FAR), the Commerce Acquisition Manual (CAM), and relevant USPTO policies, specifically regarding:

Contract and task order award procedures. We found that contracting officers neither (a) justified the use of T&M/LH contracts nor (b) established ceiling prices in task order award documents. Contracting officers did not follow government established best practices for justifying the use of T&M/LH contract types for 27 contracts. Also, contracting officers did not establish ceiling prices for 23 contracts, thus increasing the risk of incurring additional costs.

Contract oversight procedures. We found that (a) contracting officers and program officials often did not prepare or did not provide surveillance plans such as quality assurance surveillance plans (QASPs) or service level agreements (SLAs); (b) surveillance personnel did not consistently document acceptance of deliverables or maintain documentation of contractor performance; (c) surveillance personnel did not sufficiently document support for invoice payments; and (d) contracting officials did not ensure that surveillance personnel were trained, certified, and appointed prior to providing contract technical oversight for contracts.

Contract files. We found that contract files were lacking key contract documentation such as contract award documents, modifications, and surveillance plans—which the FAR requires in contract files to constitute a complete history of the contract transactions, to support informed decisions at each step in the acquisition process and provide information for reviews and investigations.

WHAT WE RECOMMEND

We recommend the Director of Office of Procurement

1. require contracting officers to document the contract file providing the specific justification supporting the decision for choosing a T&M/LH contract type.
2. establish and document ceiling prices in the contract award document for all task orders and stand-alone contracts.
3. require contracting officers to prepare and maintain a surveillance plan in the contract file for T&M/LH contracts.
4. ensure CORs and TOMs document the acceptance of all deliverables in accordance with contract requirements and USPTO policy.
5. reemphasize that CORs and TOMs document surveillance over contractor performance, to ensure work performed on a T&M/LH basis is done in accordance with contract and task order requirements.
6. ensure future T&M/LH contracts include FAR Subsection 52.232-7, the T&M payment clause.
7. require contracting officers to appoint in writing properly trained and certified CORs and TOMs prior to awarding T&M/LH contracts, and remove those who fail to meet those requirements.
8. Improve controls to properly maintain and safeguard contract files.