

DOCUMENT RESUME

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Office of Telecommunications Policy's Contract for a Publication on Intercepting Electronic Communications. ICD-78-110; B-146864. April 10, 1978. Released April 25, 1978. 3 pp. + 3 appendices (35 pp.).

Report to Rep. John E. Moss; by Elmer B. Staats, Comptroller General.

Issue Area: Federal Procurement of Goods and Services: Reasonableness of Prices Under Negotiated Contracts and Subcontracts (1904).

Contact: Logistics and Communications Div.

Budget Function: General Science, Space, and Technology: Telecommunications and Radio Frequency Spectrum Use (258).

Organization Concerned: Office of Telecommunications Policy; Mitre Corp.

Congressional Relevance: Rep. John E. Moss.

Authority: Freedom of Information Act (5 U.S.C. 552(b)). Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. 2510). Communications Act of 1934 (47 U.S.C. 605). Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251). Privacy Act of 1974. =41 C.F.R. 1. Executive Order 11828. Executive Order 11556. S. Rept. 94-755.

In June 1976, the Office of Telecommunications Policy awarded a firm-fixed-price sole source negotiated contract to the Mitre Corporation to study the interception vulnerabilities of unprotected domestic commercial telecommunications systems, especially microwave systems. The study yielded a two-volume report and a separate "how-to" publication entitled "Selected Examples of Possible Approaches to Electronic Communications Interception Operations." Findings/Conclusions: This "how-to" publication was withheld from public release until a decision was made that its contents were not classified and that it did not meet disclosure exemptions under the Freedom of Information Act. In January 1978, the Office began releasing the expanded "how-to" book. It was reasonable for the Office to want a comprehensive study made, since none was available, on the interception vulnerabilities of all U.S. commercial telecommunications systems. However, the Office's procurement involved deficiencies pertaining to documentation of procurement actions. The documentation supporting negotiation of a sole source contract on the grounds of public exigency and the impracticability of obtaining competition did not comply with procurement regulations. The "how-to" publication was produced as a separate publication for policy makers through misunderstandings between Office and Mitre officials. It is possible that publication of this book could lead to some instances of privacy invasion that would not occur if the book were not available. (RRS)

2184

REPORT BY THE

# Comptroller General

OF THE UNITED STATES

RELEASED - 4/25/78

**RESTRICTED** — Not to be released outside the General Accounting Office except on the basis of specific approval by the Office of Congressional Relations

## Office Of Telecommunications Policy's Contract For A Publication On Intercepting Electronic Communications

The Office of Telecommunications Policy awarded a sole source contract to the Mitre Corporation for a study which would assist policymakers to better understand the highly technical aspects of electronic interception.

GAO's examination of procurement records revealed deficiencies in documentation required to justify a sole source procurement.

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LCD-78-110  
APRIL 10, 1978



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-146864

The Honorable John E. Moss  
House of Representatives

Dear Mr. Moss:

This is in response to questions contained in your letters of July 28 and September 16, 1977, concerning the sole source negotiated contract awarded by the Office of Telecommunications Policy and the resulting report produced by the Mitre Corporation in January 1977. Our findings and conclusions are summarized below. Copies of your letters are attached as appendixes I and II. Our findings and conclusions, relevant to each specific question asked, are attached as appendix III.

On June 15, 1976, the Office awarded a firm-fixed-price sole source negotiated contract to Mitre to study the interception vulnerabilities of unprotected domestic commercial telecommunications systems, especially microwave systems. Mitre performed the study and provided the Office with a two-volume report and a separate publication entitled "Selected Examples of Possible Approaches to Electronic Communications Interception Operations." This latter publication, called a "how-to" book, was withheld from public release until a decision was made that (1) its contents were not classified pursuant to Executive Order 11652 and (2) it did not meet the disclosure exemptions under the Freedom of Information Act (5 U.S.C. 552(b)). In January 1978, the Office began releasing the "how-to" book, which was expanded to include sections on applicable laws and annotated with warnings concerning unauthorized interceptions, to individuals requesting it in writing under the Freedom of Information Act.

The functions and responsibilities for Federal telecommunications policy were assigned to the Office under Executive Order 11556. We believe it was reasonable for the Office to want a comprehensive study made, since none was available, on the interception vulnerabilities of all U.S. commercial telecommunications systems to support issuance of pertinent telecommunications policy guidelines.

The Office's procurement involved certain deficiencies pertaining to documentation of the procurement actions. We concluded that the documentation supporting negotiation of a sole source contract on the grounds of public exigency and the impracticability of obtaining competition did not comply with procurement regulations which require that such actions be clearly justified. The contract was terminated and a new contract awarded for the purpose of preventing overobligation of fiscal year 1976 funds, without change in scope of work or total price.

The questioned "how-to" publication, although not needed by persons having the requisite expertise to understand the first two volumes of the Mitre report, was produced as a separate booklet for policy makers through misunderstandings between the Office and Mitre officials. It is possible that publication of the third volume could lead to some instances of privacy invasion that would not occur if it was not available. We could not determine the number of increased attempts at interception that might be made nor the increased invasions of privacy which could result.


We examined the Office's and contractor's contract files and other documentation relating to the negotiation, award, and performance of the contract. Due to the lack or inadequacy of documentation, much of the information we developed was obtained through interviews. We interviewed present and former personnel involved in the procurement; our write-ups of such interviews, which are reflected in appendix III, were reviewed and approved by each person interviewed. We also examined applicable laws related to interception or disclosure of communications transmitted over telecommunications systems.

B-146864

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 15 days from the date of the report. At that time, we will send copies to interested parties and make copies available to others upon request.

We trust the above summary and the details in appendix III provide the information you requested.

Sincerely yours,

  
Comptroller General  
of the United States

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July 28, 1977

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JUL 29 1977

Elmer Staats  
Comptroller General of the U.S.  
General Accounting Office  
411 G Street, N.W.  
Washington, D.C. 20548

Dear Mr. Comptroller General:

Enclosed with this letter is a remarkable document I have discovered and obtained in the course of my investigation into wiretapping and privacy invasions. It is a previously unrevealed third volume of a little known study contracted out by the White House Office of Telecommunications Policy to the Mitre Corporation, possibly on a sole source basis.

Upon close examination, this document, dated January, 1977, with the interesting title of "Selected Examples of Possible Approaches to Electronic Communications Interception Operations", deals solely with surreptitious methods of wiretapping. Its chapter headings include:

- ...."Interception of a Suburban Residential Phone."
- ...."Interception of a Business's Data Communication To A Computer Service."
- ...."Interception of Conversations Over the Direct Distance Dialing Network Between Two Specific Individuals In Different Cities."

I am informed that the person within OTP who acted as the Contracting Officer's Technical Representative (COTR), was on detail from the National Security Agency, and has since left Federal employ to work for the American Telephone & Telegraph Company in an allegedly highly classified capacity.

Elmer Staats

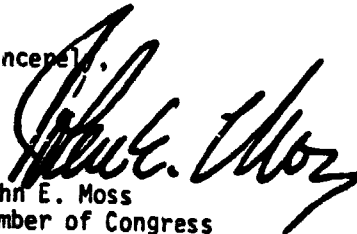
July 28, 1977

Nowhere in this unique document is there any mention of legality, court orders or similar cloaks of authority under which such privacy invasions are grudgingly and occasionally sanctioned. In effect, then, this publication, ordered and paid for by Federal funds, appears to be a how-to-do-it manual on non-court-ordered wiretapping. Therefore, I feel the following questions urgently require both answers and an opinion from the Comptroller General:

1. Why was such a "how-to" book ordered by the Federal government, and why was it needed?
2. Could this publication lead to significant privacy invasions in violation of existing law in this country?
3. Was creation of this manual consistent with the appropriations purpose of the Congress?
4. Was this particular publication withheld from distribution?
5. Was it withheld from GAO auditors when they conducted a previous investigation into related issues?
6. Was this contract awarded on a sole source basis? Was it in violation of Federal bidding regulations?
7. Was the OTP COTR person on this contract a former NSA employee?
8. Was anyone at Mitre significantly involved in this contract a former OTP employee?

It is my hope that you will consider this an urgent request with top priority.

Sincerely,



John E. Moss  
Member of Congress

JEM:FSD

**JOHN E. MOSS**  
 3RD DISTRICT  
 SACRAMENTO, CALIFORNIA

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**INTERSTATE AND FOREIGN COMMERCE COMMITTEE:**  
 CHAIRMAN,  
 OVERSIGHT AND INVESTIGATIONS SUBCOMMITTEE

September 16, 1977

Honorable Elmer Staats  
 Comptroller General of the United States  
 General Accounting Office  
 441 G Street, N.W.  
 Washington, D.C. 20548

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Dear Mr. Comptroller General:

On July 28, 1977, I wrote you asking for an investigation of a government-sponsored study which resulted in what proved to be a how-to-do-it manual on wiretapping. That work is now proceeding. However, further information has come into my possession which strongly suggests that further specific questions should be answered regarding this manual. They are as follows, and should be answered without much further difficulty:

1. Was there a formal justification for a sole source award to Mitre, known as a D & F, or "determination and findings?"
2. Was former OTP employee Charles Joyce, now with Mitre, involved in the performance of the contract?
3. Did Mr. Joyce cause Mr. John Metelski to be hired by OTP?
4. Was Mr. Metelski the OTP point of contact on the contract in a technical sense? This is known as a COTR, or Contracting Officers Technical Representative.
5. Was the third volume, the one in question here, provided gratuitously by Mitre, or was it called for specifically in verbal or written form?
6. Was there a contract change after the original contract was signed, and if so, for what purpose?



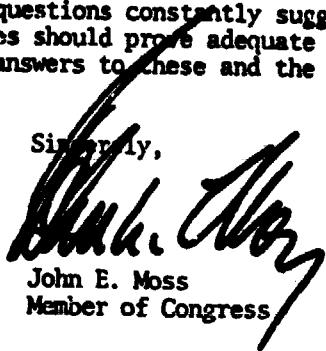
Honorable Elmer Staats

September 16, 1977

7. Why was the report, particularly the third volume, produced in an unclassified version?
8. What was the relationship, if any, between the Mitre contract in question and classified activities underway at OTP in connection with the Soviet interception problem?

As you may know, there is much more to this manual and its contract than meets the eye. More questions constantly suggest themselves, although these additional ones should prove adequate for the investigation. I very much seek specific answers to these and the questions in my July letter. Thank you.

Sincerely,



John E. Moss  
Member of Congress

JEM:FSD

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#### ABBREVIATIONS

AT&T	American Telephone and Telegraph Company
COTR	Contracting Officer's Technical Representative
D&F	Determinations and Findings
GAO	General Accounting Office
GSA	General Services Administration
NSA	National Security Agency
NSC	National Security Council
NTIS	National Technical Information Service
NWC	National Wiretapping Commission
OTP	Office of Telecommunications Policy

GENERAL

The questions asked in Congressman Moss' letters to GAO, dated July 28, 1977, and September 16, 1977, generally address three issues, namely, (1) the contract negotiated between the Office of Telecommunications Policy (OTP), and the Mitre Corporation; (2) the contract product, or report, including the "how-to" third volume; and (3) the OTP and Mitre personnel involved in contract negotiations and the resulting report. We have arranged the questions and our findings and conclusions accordingly. It should be noted that much of the information developed during this inquiry was based on interviews with the people involved. This was because of the absence or inadequacy of documentation. However, interviews were confirmed by interviews with other people directly involved in the specific action or by reference to documentation to the extent such documentation was available.

Why was the Mitre contract ordered and why was it needed?

We were advised by both present and former OTP officials that they had been concerned for some time with the privacy and security of telecommunications. They told us that prior to the enactment of the Omnibus Crime Control and Safe Streets Act of 1968, the Federal statutory controls on interception of radio communications were in Section 605 of the Communications Act of 1934, (47 U.S.C. 605). Provisions contained in chapter 119 of Title III of the 1968 act expanded these controls by prohibiting interception of oral and wire communications. However, these officials did not believe that Title III protected communications which travel in digital or other non-aural forms because the new provisions limited the definition of interception. They believed that this definition-- "the aural acquisition of the contents of any wire \* \* \* communications,"--meant that the illicit acquisition of non-aural communications was not an "interception" and, therefore, not prohibited.

OTP officials referenced two reports to support their position. Senate Report 94-755 of the Select Committee to Study Government Operations, With Respect to Intelligence Activities, United States Senate, April 23, 1976, states:

"Existing law protects only communications from which intelligence can be aurally 'acquired' (18 U.S.C. 2510(4)) so there is at present no legal bar to the intercept of non-voice communications."

Also, the report, "Electronic Surveillance" by the National Wiretapping Commission, 1/ dated April 30, 1976, states:

"The legislative history of Title III indicates clearly that pen registers 2/ can be used without following the court-ordered procedure of section 2518 (Senate Report No. 1097, 90th Congress, 2nd Session). Title III is inapplicable because 'intercept' is defined in section 2510(4) to mean the aural acquisition of the contents of any wire or oral communication through the use of any electronic, mechanical, or other device. As thus defined, interception does not occur with a pen register because no aural acquisition of a communication's content takes place." 3/

OTP officials also said that the enactment of the Privacy Act of 1974 required Federal agencies to implement appropriate privacy safeguards. Many Government agencies, reacting to the act, were proposing that encryption devices be used for safeguarding telecommunications containing personal data. The National Bureau of Standards recommended that other security safeguards be implemented before sophisticated and costly encryption devices are employed for the protection of personal data (Federal Information Processing Standards Publication 41, May 30, 1975).

OTP officials said that their concern for telecommunications privacy and security increased in 1975. Serious claims, concerning the capabilities of foreign powers to surreptitiously intercept U.S. domestic telecommunications, were made in the report by the Commission on CIA Activities Within

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1/The National Wiretapping Commission was established by Congress, effective January 2, 1971, to evaluate the effectiveness of Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C 2510-2520), as amended. The Chairman of the Commission was William H. Erickson, Associate Justice, Supreme Court of Colorado.

2/pen register--a device which can be attached to a telephone line to record dialing impulses and thus the telephone number dialed by an outgoing call.

3/The Supreme Court confirmed this interpretation on December 7, 1977 in United States v. New York Telephone Co., 46 U.S.L.W. 4033, 4035.

the United States, 1/ dated June 6, 1975. Also, on June 9, 1975, the Vice President of the United States publicly remarked:

"The Commission's findings pertain not only to national security and other vital governmental information, therefore, but also electronic intrusion in the business and private lives of American citizens. This is not only possible, but it is being done. Microwave transmissions are wholly susceptible."

Following these remarks, the news media began to publicize allegations concerning illicit interception of communications by U.S. and foreign government agencies.

In a memorandum to the Vice President, dated June 27, 1975, John Eger, then Acting Director of OTP, stated:

"In view of the revelations concerning telephone espionage contained in your report on the CIA, I have recommended to the President that an appropriate policy response is necessary. In view of the complexity and sensitivity of this matter, I recommend that there be effective liaison between us on this matter."

In a memorandum to the President, dated June 30, 1975, Eger stated:

"The Rockefeller Report on the CIA has drawn attention to the capabilities of foreign powers to monitor U.S. domestic telecommunications traffic, both governmental and private. The potential for such monitoring raises concern related not only to our national security, but also to the privacy and confidentiality of personal affairs and business dealings, and the effective functioning of our economy. \* \* \* This Office is charged with formulating Executive Branch telecommunications policies and standards,

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1/The Commission on CIA Activities Within the United States was established by Executive Order 11828 of January 4, 1975, to analyze the domestic activities of the CIA in the interest of protecting privacy and security rights of American citizens. The Chairman of the Commission was Vice President Nelson A. Rockefeller.

including considerations of privacy and national security. It is my recommendation that we be designated to work with the National Security Council and the Domestic Council Committee on the Right of Privacy to develop appropriate policy options for dealing with the telephone interception threat."

According to Thomas J. Keller, former General Counsel of OTP, he and Mr. Eger met with Brent Scowcroft, Assistant to the President for National Security, some time between June 1975 and June 1976, to discuss the telecommunications interception threats. Mr. Keller said that at this meeting, Messrs. Eger and Scowcroft determined that an unclassified technical evaluation of the feasibility of interception and general vulnerability of all kinds of telecommunications systems ought to be performed. Mr. Keller also said that Mr. Eger determined that this unclassified evaluation would supplement an ongoing classified National Security Council project.

After the meeting with Mr. Scowcroft, Mr. Keller said that OTP's staff conducted an extensive research and determined that there was no well-documented study of the feasibility of intercepting transmissions carried over commercial telecommunications systems, especially microwave systems. Mr. Keller said that he and Mr. Eger determined that it would be imprudent to allow huge sums of Government moneys to be spent for encryption devices or other costly and sophisticated technology without having a well-documented, easily understandable study of the technical vulnerabilities of these systems. Therefore, according to Mr. Keller, Mr. Eger determined that an objective, qualified consultant should be retained to conduct an unclassified technical evaluation of domestic commercial telecommunications systems, especially (1) system design, (2) the vulnerabilities of each system design, (3) the threats to such vulnerabilities, and (4) the costs associated with meeting the threats.

On June 16, 1976, L. Daniel O'Neill, contracting officer for OTP, forwarded copies of the subject contract to Mitre for signature. In his transmittal letter accompanying the contract, Mr. O'Neill stated that:

"As part of its assessment of the adequacy of present legal protections, the Office is interested in determining the extent to which various methods of electronic transmissions of communications are vulnerable to invasion of privacy by

means of electronic interception. In addition, any judgement on our part regarding the efficacy of legal safeguards against privacy invasions must take into account the degree of detectability of various methods of surreptitious interception of telecommunications."

In a memorandum, dated July 16, 1976, Mr. Eger advised Thomas Houser, Director of OTP, that the memorandum to the President, dated June 30, 1975 (referred to on page 9), was withdrawn after agreement was reached that OTP should develop a policy response for dealing with the interception threat.

During an interview on October 3, 1977, Mr. Eger told us that he felt a study on telecommunications interception was needed to recommend pertinent telecommunications policy. He said that he did not like some of the technical "quick fix" proposals that had been made to remedy the interception vulnerability threats. Mr. Eger also said that he felt that a competent firm should look at subscriber-to-subscriber vulnerabilities on all telecommunications systems.

As pointed out by OTP officials, existing law protected communications from which intelligence can be aurally acquired. However, they believed there was no legal bar to intercepting non-aural communications. Because of this, many Government agencies were concerned about the Privacy Act requirements when transmitting personal record information over telecommunications systems. Further, public announcements on certain intercept vulnerabilities and capabilities within the United States had been made by Government officials and the news media.

Although there was an ongoing study to evaluate the intercept capabilities of foreign entities within the United States, the study was classified and addressed only interception by foreign entities using extremely sophisticated equipment--just one segment of the overall interception vulnerability problem. Also, since there was no comprehensive study available concerning the vulnerabilities of all U.S. commercial telecommunications systems, especially microwave systems, OTP did not have the information needed to support issuance of unclassified policy guidelines.

Additionally, because it did not have this needed support, OTP could not recommend an adequate policy response that would appropriately address the public announcements



made by Government officials or the allegations publicized by the news media.

Based on the above, we believe that it was reasonable for OTP to want a comprehensive study made on the vulnerabilities of electronic interception of electronic communications to determine all vulnerabilities and their nature so that pertinent telecommunications policies could be developed.

Was this contract awarded  
on a sole source basis?  
Was it in violation of  
Federal bidding regulations?

On the basis of speed, professional services, and an impracticability of competition, Messrs. Eger and Keller determined that the contract for the unclassified study would not be competitively negotiated. Eger determined that it was essential that the firm or persons performing this evaluation be (1) aware of national security interests involved; (2) competent in the understanding and design of microwave communications systems, both civil and military, secure and non-secure; and (3) well versed in interception techniques used against such systems.

Three contractors were considered and two were approached. Bell Laboratories was considered but could not be used. Because the contract required that the telecommunications systems of various commercial carriers be evaluated, any study performance by a company in the telecommunications business would produce a conflict of interest.

Ashby & Associates, a firm that had performed studies for the National Wiretapping Commission, was contacted. It was determined that this firm did not possess the necessary level of expertise with respect to microwave technology. It was known that Mitre had performed engineering and technical studies for the Department of Defense and other agencies, and such information was in OTP's contractor bidder file. Thomas Keller telephoned Charles Joyce, formerly OTP's Assistant to the Director for Government Communications, but now employed by Mitre. They determined that Mitre had the expertise and could perform the requested short-term technical study.

On June 15, 1976, OTP awarded a firm-fixed-price sole source contract (TP6AC039) to Mitre in the amount of \$47,034. The amount of the contract was based on a proposal, submitted

by Mitre on June 10, 1976, for estimated costs for direct labor, overhead and travel costs amounting to \$44,372, and a fee (6 percent of estimated cost) of \$2,662.

L. Daniel O'Neill, Contracting Officer, and John Letelski, Contracting Officer's Technical Representative, were the principal contract and liaison representatives for OTP. Charles Sanders was the principal study group representative for Mitre.

Our review of OTP's procurement records relating to the award of the sole source contract revealed the following deficiencies:

- There was no evidence of formal contract award approval by the Director of OTP as required by OTP's current procurement procedures.
- The "Determinations and Findings" (D&F) was reconstructed more than a year after the contract award date.
- The file contained inadequate explanation of the unique qualifications of Mitre justifying a sole source award.
- The file contained inadequate explanation of the urgency of the procurement which was a basis for a sole source award.

In regard to the first deficiency noted above, OTP procurement procedures, dated July 20, 1976, require that all proposed contract awards will be approved in writing by the Director, or in his absence the Deputy Director. Mr. O'Neill told us that OTP's procurement procedures dated before July 20, 1976, were destroyed, but the earlier procedures, effective at the time the contract was awarded, also required written approval by the Director.

We discussed this requirement with John Eger, Acting Director at the time the contract was awarded. He said that he did not recall the requirement for a formal (written) approval. He said that he orally approved many contract awards including the sole source award to Mitre.

Based on Mr. Eger's statement, we concluded that, although written approval was not made in accordance with OTP's procurement procedures, the sole source contract proposal was approved by OTP's Acting Director.

The deficiencies regarding OTP's D&F, Mitre's unique qualifications, and urgency of procurement are discussed below.

Was there a formal justification for a sole source award to Mitre, known as the D&F?

The D&F for the Mitre contract is undated, and an affidavit is attached, dated August 8, 1977, signed by Mr. O'Neill. It states:

"This Finding and Determinations [sic] is a replacement for the original document prepared by Thomas Keller, General Counsel to OTP in June 1976. That document was inadvertently been lost from this file and is replaced by the attached."

In discussions with Mr. O'Neill, he said that (1) he had no idea how the original was lost; (2) Mr. Keller prepared the original because he was most knowledgeable about why the contract was negotiated sole source; and (3) he (O'Neill) had approved the D&F as the contracting officer and, therefore, was familiar with its contents.

Although the D&F was reconstructed by Mr. O'Neill, Mr. Keller stated that it agrees with the original D&F that he prepared prior to awarding the sole source contract to Mitre. It should be noted, however, that 41 U.S.C. 257(d) requires that the data concerning the negotiations of contracts of this type must be preserved in the agency files for a period of 6 years following final payment on the contract.

OTP's reconstructed D&F justified the award to Mitre on a negotiated sole source basis under section 302(c)(10) and (2) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.).

A D&F is required when either of the above sections are used to justify negotiation.

41 U.S.C. 252(c)(10) permits negotiation instead of formal advertising for services for which it is impracticable to secure competition. This authority may be used when the services can be obtained from only one firm (sole source).

In this regard, the D&F states:

"It is necessary that the firm or persons performing this contract (a) be aware of national security interests involved; (b) be competent in the under-

standing and design of microwave communications systems, both civil and military, secure and non-secure; and (c) that the contractor be well versed in interception techniques used against such systems.

"The study described above can only be provided at a reasonable cost by one firm. [I determined] That this firm is the only potential contract[or] with the required mixture of experience and skills."

OTP's procurement records contain no other information showing how only Mitre had the required qualifications for the contract. The failure of the D&F to clearly indicate the reasons for the determination that MITRE was uniquely qualified to perform the contract conflicts with 41 C.F.R. 1-3.305(b). This provision of the Federal Procurement Regulations requires that the D&F "shall set out enough facts and circumstances to clearly justify the specific determination made." Moreover, the statement in the D&F that the study could only be provided "at a reasonable cost" by one firm implies that while other firms might have been qualified to perform the contract, it was presumed that their prices would be unreasonably high. Since the two firms other than Mitre which were informally considered for this contract were excluded for reasons other than cost, the basis for this statement is unclear. Also, the fact that competing firms' prices might be unreasonably high does not, without more explanation, justify a sole source procurement. In our opinion, the appropriate procedure would have been to send requests for proposals to a representative number of known qualified firms in accordance with 41 C.F.R. 1-1.301, which requires negotiated procurements to be on a competitive basis to the maximum practicable extent. It is possible that offers would have been received from these firms which would have been competitive with Mitre's contract price.

We discussed with Mitre officials, Mitre's "unique" qualifications for the OTP contract. They informed us that Mitre's work was predominantly for Government agencies in the field of electronic communications, including microwave systems.

41 U.S.C. 252 (c)(2) also permits negotiation if a "public exigency" will not admit the delay incident to formal advertising. This authority may be used when the need is of compelling and unusual urgency, and the Government would be seriously injured if the services were not procured by a certain time (41 C.F.R. 1-3.202(a)). In this regard, the D&F states:

"It is vital that an assessment of the vulnerability of such systems be provided

as rapidly as possible due to National security interests effected.

"The need for these services is of such compelling urgency, as they relate to other classified analysis underway, as to not allow the delay incident to formal advertising."

OTP's procurement records contain no additional information showing why there was an unusual compelling urgency to award the contract.

Mitre officials said they were told that the study had to be completed in 120 days. They had no additional information on the need for urgency. Further, the D&F did not describe the expected effect on national security interests which delay in a study of unclassified commercial telecommunications transmissions would have had. Therefore, we conclude that the D&F also did not justify procurement on the basis of public exigency, in conflict with the 41 C.F.R. 1-3.305(b), discussed earlier.

We were unable to verify the relationship between the Mitre contract and the classified study referred to in the D&F. Additional comments in this regard are presented below.

What was the relationship, if any, between the Mitre contract in question and classified activities underway at OTP in connection with the interception problem by foreign entities?

During our review, Mr. O'Neill told us that Mr. Eger advised him that the Mitre study was needed to determine (1) if off-the-shelf equipment and technology was readily available to intercept unprotected domestic communications and (2) whether sophisticated "black box" technical safeguards, such as those proposed for classified military and national security communications, were required for unprotected domestic communications. The Mitre study would provide technical input considered necessary to supplement OTP's classified project. Mr. O'Neill said that the Mitre contract was not intended to be a classified study; however, the completion date for the Mitre study was geared to OTP's targeted date for completing its input for an ongoing classified report.

Dr. William Thaler, formerly scientific advisor to Mr. Eger, but presently the Acting Director of OTP, said, on August 9, 1977, that he was not involved in OTP's

negotiations with Mitre. On November 10, 1977, Dr. Thaler told us that Mr. Eger was concerned with privacy and security of communications, especially the Privacy Act requirements for Federal agencies. He said that Mr. Eger wanted a circular on privacy of data communications published before the Ford administration left office. OTP had a draft circular, but Dr. Thaler said that OTP did not have enough technical information available to support this draft. The Mitre study was performed to provide this supporting technical information to OTP. Dr. Thaler said the purpose of the Mitre study had no relationship to the ongoing OTP classified project. He also said that he did not know that the Mitre study covered telecommunications interception until he reviewed Mitre's draft report with Mr. O'Neill and John Metelski, then OTP's Contracting Officer's Technical Representative, and representatives from Mitre on November 30, 1976. Dr. Thaler said that the Mitre study covered the vulnerabilities to electronic interception of unprotected domestic commercial telecommunications systems. It did not address threats or vulnerabilities to intercepting and interpreting the content of traffic carried over protected systems.

On November 14, 1977, Mr. Metelski said that the purpose of the Mitre study was to determine if OTP should propose legislation on interception of non-aural communications. He added that, since the law did not protect interception of non-aural transmissions, a study was needed to determine what threats and their nature could be exploited on domestic telecommunications systems so that OTP could propose pertinent legislation. Mr. Metelski also said that, although the subject (telecommunications interception) in the Mitre study was the same as that of the ongoing classified project, the Mitre study dealt with interception of unencrypted transmissions by anyone, whereas the classified study dealt with interception by foreign entities.

On November 15, 1977, we asked Mitre officials if they knew of any relationship between OTP's concern for the interception problem by foreign entities and the study performed by Mitre.

According to Charles Sanders, Mitre's study group leader, the purpose of the OTP contract was to have Mitre study the vulnerability of all commercial telecommunications systems and media to electronic interception. The study conducted for the National Wiretapping Commission was limited to wiretapping and bugging, and did not include interception vulnerabilities of such media as microwave systems.

According to Charles Joyce, the Mitre study was performed to provide an assessment of the vulnerabilities of unencrypted transmissions to interception by anyone. He said that, although both the Mitre study and the classified study were concerned with interception of transmissions, the classified study was limited to interception capabilities of foreign entities.

During a followup interview with Mr. Eger on December 19, 1977, he said that in June 1975, a study group was formed by the National Security Council (NSC) to study the alleged capabilities of foreign entities to intercept and monitor telecommunications. The study group was composed of representatives from various agencies, including OTP. Various tasks dealing with different aspects of telecommunications interceptions were assigned to different study group representatives. Mr. Eger said that since he was concerned with related issues, such as telecommunications privacy, he proposed that a competent firm be commissioned to study the vulnerabilities of unclassified commercial telecommunications systems. This study would provide supportive documentation OTP needed for developing various telecommunications policies and also provide information that would supplement the study on the interception problem by foreign entities. Mr. Eger said, therefore, the unclassified study was proposed to be completed at the same time the NSC study group had scheduled for completing the assigned tasks concerning the foreign interception problem.

By letter, dated December 2, 1977, we requested NSC to furnish a copy of a certain classified study of telecommunications interception, in which OTP participated, or provide access to the study for our examination and review. Also, on December 21, 1977, we met with a member of the NSC staff and present and former OTP officials to further identify the classified study we requested in our December 2 letter. We were advised that OTP had participated on the NSC Telecommunications Panel, called the "David Panel," and had provided oral and written reports (OTP did not have copies) for the Panel's study concerning the problem of foreign entities intercepting telecommunications within the United States. Mr. O'Neill said that there is some misunderstanding concerning the relationship between the Mitre study and the classified studies. He said past classified studies, including the Panel study, looked at only one segment of telecommunications--protected telecommunications that may be intercepted using highly sophisticated and specialized equipment and technology. No unclassified studies had been made to determine what was needed to safeguard the unprotected commercial systems. Further, Mr. O'Neill said that

Mr. Eger and other OTP officials perceived a need, at the time the contract was awarded, for evaluating the interception vulnerabilities of unprotected U.S. commercial telecommunications. The results of such an evaluation could be used to supplement the Panel study. The perceived need was a determination made by the Acting Director of OTP and not by the NSC or the Panel.

Mr. Eger agreed with Mr. O'Neill. Mr. Eger said that he was not only concerned with the rapid changes in telecommunications technology and its effects on privacy, such as electronic funds transfer systems, but he was also concerned with the full range of problems concerning telecommunications privacy and security. He said the reasons he proposed such an unclassified study were (1) there were no unclassified studies available and (2) so that all of OTP's concerns could be covered.

Dr. Thaler said that the Mitre report could be used for different purposes, such as combating domestic criminal activities, proposing legislation, and safeguarding against interception by foreign powers. OTP, at that time, could not say and prove that interception of certain communications was possible because the source was classified. The Mitre report is unclassified and can be used as a source for saying and providing proof that all kinds of telecommunications are vulnerable to interception.

On January 3, 1978, we received NSC's letter dated December 23, 1977, in response to our December 2, 1977, letter. We were advised that the Panel, composed of Government officials (including OTP) and private sector consultants, had been disbanded, and the responsible participants were no longer employed by NSC's staff. We were also advised that the Panel had provided the current NSC staff with a reference file concerning the foreign intercept problem in general. The NSC letter states that:

--OTP was in fact a participant in these Panel activities although there is no direct or indirect reference to the Mitre Report in question.

--The exclusive focus of the Panel was the protection of telecommunications within the U.S. from interception by foreign entities. There is no indication whatsoever that the Panel was in any way concerned with the capability of



Federal agencies to intercept communications of U.S. citizens and agency practices in this respect."

The NSC letter also advised us that the Panel file would not be made available for our perusal because,

"It contains some highly classified materials that are compartmented on a 'must know' basis as well as internal NSC and White House memoranda reflecting policy advice."

Because of the above NSC response, we were not able to verify the relationship between the classified study and the Mitre contract.

During our earlier review of the vulnerabilities of telecommunications systems, <sup>1/</sup> we found that the Government uses a variety of telecommunications services, generally leased from commercial telecommunications carriers in the continental United States. Local and long distance services for voice and record (message and data) are provided by commercial carriers to meet the telecommunications needs for both the Government and the private sector. We also found that the commercial facilities providing these services are vulnerable to unauthorized use, including interception. The Mitre report supports the findings in our review.

Many communication transmissions between Government agencies and between Government agencies and the private sector contain classified information and are appropriately encrypted, as provided by legislative or regulatory requirements; other transmissions, are neither classified nor encrypted. Such transmissions may contain information pertaining to certain business dealings, financial conditions, technological data, foreign and domestic investments, etc., which may be used in making decisions affecting international trade agreements, domestic and foreign monetary negotiations, defense contract awards, etc. Thus, these transmissions, which are related indirectly to National security interests, are carried over our domestic commercial telecommunications systems in an unprotected mode and are subject to illicit interception.

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<sup>1/</sup>See GAO report, "Vulnerabilities of Telecommunications Systems to Unauthorized Use," LCD-77-102, Mar. 31, 1977.

An assessment of the vulnerabilities of such systems was needed to determine what cost-effective safeguards are necessary to protect unclassified and unprotected transmissions carried over domestic telecommunications systems. We believe the Mitre study provided such an assessment, and can be used as a basis for determining policies and proposing legislation regarding communications interception. As indicated earlier, however, (1) we could not verify the relationship between the Mitre contract and the classified study and (2) we concluded the D&F did not provide the documentation required to justify a sole source procurement.

Was there a contract change after the original contract was signed, and if so, for what purpose?

On September 29, 1976, OTP terminated its original contract (TP6AC039), effective September 30, 1976, for accounting purposes. All work completed by Mitre through the effective termination date was to be billed against contract TP6AC039. All work commenced or continued from October 1, 1976, to completion was to be billed under a new contract (TP7AC003).

We verified with an official of the General Services Administration (GSA), that OTP's original contract (TP6AC039) was terminated with an unpaid balance of \$18,000 effective September 30, 1976. OTP's new contract (TP7AC003) for the amount of \$18,000 was also awarded to Mitre. The vouchers supporting GSA's payments to Mitre for both contracts had a combined total of \$47,034--the full amount of OTP's original contract.

According to Mr. O'Neill, the original contract was terminated so that OTP would not over-obligate fiscal year 1976 funds. A new contract was written only to change the fund citation. No change was made to the original work statement or price.

We found nothing to indicate that any change was made to the subject contract, except as stated by Mr. O'Neill above.

Was the third volume, the one in question here, provided gratuitously by Mitre, or was it called for specifically in verbal or written form? Why was such a "how-to" book ordered by the Federal Government, and why was it needed?

On June 15, 1976, OTP awarded a sole source contract to Mitre. The purpose of the contract was, as stated under

the Scope of Work, to study the vulnerability of electronic communications to electronic interception. Also, under the Statement of Work of the contract, Mitre was to investigate the vulnerability of various commonly available electronic communications means to interception by persons other than the intended respondents on only unclassified civilian communications services which have not been altered by electronic, mechanical, or other means for the purpose of providing security or privacy.

Twenty days after OTP approved a list of communications means to be investigated, Mitre was to deliver to OTP a brief narrative covering, in part, interception methodology and conclusions for each communications means approved. Within 120 working days after OTP approved the communications means to be investigated, Mitre was to deliver to OTP a final report. At a minimum of once monthly, OTP and Mitre officials would meet for a progress review.

On June 24, 1976, Mitre submitted to OTP an outline of its proposal for analyzing the interception vulnerabilities of various types of telecommunications systems.

By letter, dated June 30, 1976, John Metelski, OTP Contracting Officer's Technical Representative for the Mitre study, approved Mitre's suggested list, as amended, of communications carriers and associated telecommunications systems to be investigated.

Mitre submitted to OTP a Mitre Working Paper (WP-11743), "Study of Vulnerability of Electronic Communications Systems to Electronic Interception--Phase One Report," dated August 2, 1976. This working paper, covering Mitre's first 20 working days of the study, as required by the contract, contained a preliminary draft report, and described work accomplished and work still to be performed.

According to Mr. Metelski, he felt that Mitre was producing a technical report that would not be easily understood by non-technical policymakers. Also, he said that in the August report, Mitre had misconstrued the meaning of the term "intercept" to mean random listening as opposed to targeting specific correspondents, as defined in the Statement of Work article of the contract. Mr. Metelski advised Mr. Sanders that the terms used in the study report should have more explicit meanings to explain how interception could be accomplished. He said they agreed that, as required by the contract, the study report would generally follow the format of the report prepared by the National Wiretapping

Commission (NWC) and contain a general overview supported by detailed engineering data.

On September 20, 1976, Mitre submitted to OTP a "working outline" for the final report. Mr. Metelski said that, since there was no record of a meeting on the "working outline" in OTP records, he may have met with the Mitre study group at Mitre, but that there were no discussions concerning a "cook book" at this meeting. He said he did ask Mr. Sanders if there would be a non-technical overview section included in the final report and whether the overview would be similar to the case study document used by the study group.

According to Mr. Sanders, his study group had developed case studies for each communications means to be investigated. These case studies were discussed with Mr. Metelski because Mr. Metelski thought the preliminary draft report was too technical and should be written in simpler language.

On October 12, 1976, Mr. Metelski met with the Mitre study group members and representatives of American Telephone and Telegraph (AT&T) Company to discuss the technical characteristics of equipment required to intercept electronic transmissions being transmitted over AT&T systems. According to Messrs. Metelski and Sanders, this meeting was only to request technical information from AT&T. Both said that the proposed content of Mitre's final report was not discussed.

On November 30, 1976, OTP and Mitre officials met to discuss Mitre progress, the draft report, the conformance of the draft report to the contract, and the remaining work schedule.

According to Mr. Metelski, he and Dr. Thaler determined that certain information suggested by the Mitre study group for inclusion in the final report, was "sensitive" because it was considered to be "cook book" or "how-to" information. They did not want "cook book" information in the report; they wanted the report to follow the format of the NWC report and be easily understood by policymakers. Mr. Metelski also said that, during the November 30 meeting with the Mitre Study Group, he and Dr. Thaler decided that the suggested "sensitive" information should be excluded from the report and retained at Mitre as "work papers" to avoid inquiries under the Freedom of Information Act. Following this meeting, Mr. Metelski said that Mr. O'Neill advised him that contractor work papers were contract documentation and, therefore, Government property. Mr. Metelski said that he and Mr. O'Neill conferred with Dr. Thaler on this problem, and they all agreed that OTP would accept all study work papers developed by Mitre and deal with public disclosure, if necessary, at a later date.

According to Dr. Thaler, the Mitre people indicated they had developed some "work papers." These "work papers" contained scenarios, but he was not interested in them. He said that he did not see the scenarios, so he could not say they were "sensitive," but he knew that some "work papers" were to be assembled and sent to OTP because Mr. O'Neill had told him they were Government property.

According to Mr. O'Neill, he did not see anything "classified" in the draft report. He said that Mr. Metelski may have met with the Mitre people to discuss things considered "sensitive."

According to a Sanders memorandum to his division head, dated December 1, 1976, "a discussion between the Mitre contract office and the OTP contract office provided the final guidance for the final report." Mitre would prepare a three-volume report. Volume I would contain the narrative of the report and Volume II, the appendices. Both would be releasable to the public. Information which might be considered as a handbook on communications interception techniques would be covered in the third volume, which OTP would classify to avoid public access.

According to Mr. O'Neill, he thought that Mitre was preparing a two-volume report. He discussed this with Michael Broderick, Mitre's contracting negotiator. Mr. O'Neill also said that he thought OTP would receive some "raw work papers" in boxes.

According to Mr. Broderick, he told Mr. O'Neill that Mr. Sanders intended to publish a two-volume report and an appendix containing "sensitive" material.

During a followup interview with Mr. Sanders, he stated that a three-volume report was his idea. He felt that Volume I was becoming too bulky and the study completion date was becoming critical. He stated that, following the November 30 meeting, he discussed a three-volume report with Mr. Metelski. He suggested amendments to Volume I that would provide more explicit meanings of the terms used. He said that he also suggested placing the information considered "sensitive" in a separate appendix or a third volume. These changes could be accomplished by the contract completion date. Mr. Sanders said that Mr. Metelski agreed with his suggestions.

After reviewing the final draft of Volume I submitted by Mitre, Mr. Metelski advised Mr. Sanders in a letter dated December 21, 1976, that:

"Of major concern in this study has been not only the detection of telecommunications signals and extraction of information therefrom, but also the ability to target specific correspondents. This is clearly an important factor in the 'vulnerability' of individual communications given the volume of traffic, and was required to be considered by the Statement of Work which defined 'intercept' (in part) as \* \* \* the ability to target correspondents \* \* \* (Article V. 1.)."

On January 12, 1977, Mitre delivered 12 copies of Volume I to OTP. Twelve copies each of Volumes II and III were delivered on February 3, 1977. The forward of both Volumes I and II (pp. iv and iii, respectively) states that the report consists of two volumes. Volume I presents the general findings and conclusions of the study, and Volume II contains three appendices of technical details supporting Volume I.

In an undated memorandum, Mr. Metelski advised Dr. Thaler that OTP had received the final two documents from Mitre. The memorandum also stated:

"The transmittal letter which accompanied these documents disclosed that OTP was receiving copies of the 'cook book' materials (data which OTP prefers not to expose to public release). Because this disclosure in the letter reveals the existence of this data, I asked Mitre to re-draft the letter, leaving out any mention of this item."

The transmittal letter was revised by Mitre to eliminate any reference to the third volume.

During interviews with Mr. Metelski, he stated that he agreed with the changes suggested by Mr. Sanders, especially the amendments concerning the definition of terms for Volume I, and that these changes were made for the final report. However, Mr. Metelski stated that he thought the agreed upon third volume would contain engineering type "work papers" including the "cook book" scenarios, rather than a "cook book" portion of the report itself.

Based on the above, it appears that (1) OTP's requirement for Mitre to analyze the ability to target specific correspondents and the study report format specified in OTP's contract

contributed to Mitre's producing the third volume and (2) the third volume was produced in non-technical language to explain the study conclusions contained in Volumes I and II of the report. Additionally, there was an apparent misunderstanding between Messrs. Sanders and Metelski. Mr. Sanders believed that the requirement was for the final report to contain "cook book" scenarios which could be readily understood. Whereas, Mr. Metelski believed that the third volume would be "work papers," which included "cook book" information, but separate and distinct from the report itself.

We were advised by Dr. Thaler, and Messrs. Metelski, Sanders, and Joyce--all having technical expertise--that Volumes I and II could be used to produce the information contained in Volume III by persons having the requisite knowledge and expertise. We believe that Volume III was not needed for those persons in OTP having the technical expertise to read and understand Volumes I and II. On the other hand, persons not having the requisite knowledge and expertise would require something like the third volume to read in order to understand the significance of the technical content of Volumes I and II.

Was the creation of this manual consistent with the appropriations purpose of the Congress?

According to OTP officials, funds appropriated to OTP are for carrying out the functions assigned to the Director of OTP under Executive Order 11556 (3 U.S.C. 301). The Mitre contract was awarded to provide OTP with a documented evaluation of the vulnerabilities of commercial telecommunications systems to electronic interception so that OTP could propose pertinent legislation and policies.

The assigned functions of Executive Order 11556, in pertinent part, are:

- Develop and set forth plans, policies, and programs with respect to telecommunications that will (1) promote the public interest; (2) support national security; (3) sustain and contribute to the full development of the economy and world trade; (4) strengthen the position and serve the best interests of the United States in negotiations with foreign nations; and (5) promote effective and innovative use of telecommunications technology, resources, and services.
- Coordinate the telecommunications activities of the executive branch and formulate policies and standards

therefore including but not limited to considerations of interoperability, privacy, security, spectrum use, and emergency readiness.

- Evaluate by appropriate means, including suitable tests, the capability of existing and planned telecommunications systems to meet national security and emergency preparedness requirements; and report the results and any recommended remedial actions to the President and the National Security Council.
- Conduct studies and analyses to evaluate the impact of the convergence of computer and communications technologies, and recommend needed actions to the President and the departments and agencies.
- Contract for studies and reports related to any aspects of the Director's responsibilities.

According to Mr. O'Neill, the expenditure of funds for the Mitre contract was consistent with the responsibilities assigned to OTP under Executive Order 11556. OTP budgets for work that will be performed under the general areas of the Executive order, such as those stated above. Mr. O'Neill said that OTP had not identified a need for a specific study, such as the study performed by Mitre, when the fiscal year 1976 budget was prepared; however, the fiscal year 1976 budget did include projected work to be performed in the communications privacy and security area.

According to Dr. Thaler, individual contracts that will be awarded by OTP are normally not shown as separate line items in OTP's budgets. The Mitre contract was not separately shown in OTP's fiscal year 1976 budget. Dr. Thaler said the funds expended for the Mitre contract were consistent with OTP's assigned responsibilities, especially the second function stated above.

We concluded, in our findings on other questions, that there was a need for the contracted study. Based on the above, we believe that

- the study was consistent with the functions assigned to OTP under Executive Order 11556,
- funds appropriated to OTP are for the purpose of carrying out OTP's assigned functions, and
- the third volume was developed as a by-product of the study and did not affect the contract price.



Given OTP's responsibilities, it seems obvious that OTP should have a comprehensive knowledge of the area. In the absence of existing comprehensive studies, it would follow that such studies were needed. Furthermore, if a resulting study report was so technical as not to be understandable, except by knowledgeable and technically oriented persons, a non-technical document, such as the third volume, would appear to be useful. Thus, OTP policymakers not technically proficient in the subject matter covered by the study could more precisely understand the study results and develop appropriate policy.

Why was the report, particularly the third volume, produced in an unclassified version?

Executive Order 11652 (37 FR 5209), dated March 10, 1972, states, in part:

"\* \* \* Within the Federal Government there is some official information and material which, because it bears directly on the effectiveness of our national defense and the conduct of our foreign relations, must be subject to some constraints for the security of our Nation and the safety of our people and our allies. To protect against actions hostile to the United States, of both an overt and covert nature, it is essential that such official information be given only limited dissemination.

This official information or material referred to as classified information or material in this order, is expressly exempted from public disclosure by Section 552(b)(1) of Title 5, United States Code. Wrongful disclosure of such information or material is recognized in the Federal Criminal Code as providing a basis for prosecution. \* \* \*

The information or material covered by Executive Order 11652 is:

"\* \* \* Official information or material which requires protection against unauthorized disclosure in the interest of the national defense or foreign relations of the United States

\* \* \* shall be classified in one of three categories, namely "Top Secret," "Secret," or "Confidential," depending upon the degree of its significance to national security. No other categories shall be used to identify official information or material as requiring protection in the interest of national security, except as otherwise expressly provided by statute.  
\* \* \*"

According to John Metelski, the report did not meet the classification standards of Executive Order 11652 because its content did not contain national security information.

According to Messrs. O'Neill and Eger, the Mitre study was not intended to be classified, and the Mitre contract was not awarded to produce a classified report. Both said that the contract and the resulting report were to provide OTP with information on the interception vulnerabilities of telecommunications systems that had not been and were not being considered during past and ongoing classified studies.

Our review of the study contract revealed that the scope of the contract was limited to (1) evaluating commonly available and unclassified services provided by commercial carriers and (2) preparing a report on the interception vulnerabilities of these services. The report was intended to be unclassified; the contract limited the contractor's evaluation to unclassified matters; and the final report, including the third volume, contains information on these unclassified matters.

OTP has decided that the Mitre report, including the third volume, does not require classification, as described in Executive Order 11652. We have no basis to question OTP's decision under that order.

Was this particular publication withheld from distribution?

Mr. Metelski told us that he expected certain "work papers" supporting the report to be sensitive, and telephoned an official of the Justice Department, for advice on December 6, 1976. Mr. Metelski said he was advised that, under the Freedom of Information Act (5 U.S.C. 552), the Government could not withhold "sensitive information," including "work papers," unless they qualified for exemption under the act. Upon receiving the third volume from Mitre, Mr. Metelski said

that he discussed the problem of releasing it with Dr. Thaler. Mr. Metelski said that they decided to file it in OTP's safe and not disclose its existence.

On October 27, 1977, we were advised that OTP had received numerous requests for copies of the third volume, possibly because of disclosure in the press, but had not furnished copies (except for a copy given to Congressman John E. Moss' staff member) to requestors outside of the executive branch. At that time, OTP was still considering whether the third volume should be classified under Executive Order 11652 or whether it met other exemptions to disclosure under 5 U.S.C. 552(b). Dr. Thaler said that the Mitre report, including the third volume, was given (date unknown) to the National Technical Information Service (NTIS), Department of Commerce, for printing and public release.

Dr. Thaler said that, based on an oral request (date unknown) from the Executive Office of the President, he withdrew the third volume from NTIS (date unknown) until a decision was made concerning its release. He said he discussed the question of whether the third volume should be released under the Freedom of Information Act with Dr. Frank Press, Director, Office of Science and Technology Policy, Executive Office of the President. Dr. Thaler said he also drafted a letter for the signature of the Counsel to the President authorizing OTP to release the third volume under the Freedom of Information Act. He said that Dr. Press advised him not to release the third volume pending resolution of the question by counsel.

Dr. Press said that it was decided within the Administration (by the Counsel to the President, members of NSC, and attorneys in the Departments of Justice and Defense) that publication of the third volume did not meet any of the exceptions under the Freedom of Information Act. He said this decision was given orally to Dr. Thaler either by himself or his assistant, Col. Wayne Kay. He said he could not recall receiving a draft of a letter authorizing OTP to release the third volume, and that a record of the decision and authorization was not made.

Col. Kay and Robert Lipshutz, Counsel to the President confirmed the above recollections of Dr. Press. Mr. Lipshutz also said he believed it was not necessary to provide OTP with written authorization because there was no disagreement in the decision to release the third volume under the Freedom of Information Act.

On January 16, 1978, Dr. Thaler advised us that he received oral approval from either Dr. Press or Col. Kay.

on December 13, 1977, to release the third volume of the Mitre report, and that his request for written confirmation of the oral approval had been denied. Dr. Thaler also said that over 100 written requests for the subject third volume, under the Freedom of Information Act, had been received by OTP and, since he withdrew the subject publication from NTIS, only OTP has the authority to honor these requests. OTP began releasing the third volume, as amended, on January 9, 1978.

We received a copy of the 23-page document being released by OTP. The pages of the original 13-page document (Volume III) have been annotated with the warning "UNAUTHORIZED INTERCEPTION OF WIRE COMMUNICATION IS A VIOLATION OF FEDERAL LAW." A forward, signed by Dr. Thaler, has been added. This forward includes a warning against unauthorized interception and the penalties that may be imposed for violation of Federal law (18 U.S.C. 2510 and 2511). Certain provisions of Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. 2510, 2511, and 2512) and the provisions of Section 605 of the Communications Act of 1934, as amended, are also added. The document's pages are numbered 165 through 187. We were told that the document being released should be inserted after the last page (164) of Volume I of the Mitre report.

Was it withheld from GAO auditors when they conducted a previous investigation into related issues?

The subject manual had not been received from Mitre during the period GAO was conducting its previous investigation into related issues. A Mitre working paper (WP 11743) entitled "Study of Vulnerability of Electronic Communications Systems to Electronic Interception--Phase One Report," dated August 2, 1976, was provided to GAO auditors on November 12, 1976. The auditors were advised that Mitre's final report should be available for review by mid-December.

In February 1977, OTP provided a copy of Volumes I and II of Mitre's final report to GAO. The auditors did not know that Mitre had also produced a third volume to its study report, and it was not volunteered by OTP.

However, we have reviewed the subject third volume and believe that, if it had been provided to the auditors, it would have been considered only as additional documentation already obtained to support our report, "Vulnerabilities

of Telecommunications Systems to Unauthorized Use" (LCD-77-102, Mar. 31, 1977). However, it is unlikely we would have used it in view of its being in the nature of a "how-to" document.

Could this publication lead to significant privacy invasions in violation of existing law in this country?

The officials we interviewed at OTP and Mitre did not think the subject publication (third volume) could lead to significant privacy invasions. They contend that any good telecommunications system engineer could probably write strategies similar to those contained in the subject publication, and that more detailed information could be easily obtained from other publications. We were also advised that similar and more detailed information, especially on wiretapping and bugging techniques for intercepting voice communications, could be found in other publicly available publications, such as the study reports prepared for the NWC.

We obtained pertinent information regarding the interception equipment and technical knowledge required to successfully perform the three intercepts described in the third volume. This information showed that certain equipment (some commercially available), technical expertise, and knowledge of the operations of each targeted telecommunications system would be required to successfully perform the intercepts.

For example, this information showed that (1) amateur radio operators and engineering students, with minimal knowledge of the wire and cable systems used between the telephone company and its subscribers, could probably perform the first example described in the subject publication; (2) telephone company engineers accompanied by data processing equipment engineers, each with approximately 4-years' experience and a prior knowledge of the data conversion equipment used by the targeted subscriber, could probably use the subject publication and perform the first and second examples described therein; and (3) telephone company technicians and engineers, and telecommunications manufacturer's engineers, each with approximately 4-years' experience and specific knowledge of switching and signaling equipment, transmission routes, and multiplexing schemes, could probably use the third volume and perform all examples described therein.

Wiretapping and bugging with electronic devices to intercept oral or wire communications by aural means not authorized by a court order are prohibited by the Omnibus Crime

Control and Safe Streets Act of 1968, as amended. Individuals, groups of individuals, or organizations that engage in unlawful interception are subject to civil or criminal penalties for any violations under this act. Therefore, any technique used for penetrating the vulnerabilities of telecommunications systems, including those described in the subject publication, for the purpose of intercepting oral or wire communications by aural means without proper authority, is in violation of that act.

Also, the Communications Act of 1934, as amended, prohibits disclosure of any interstate or foreign communications by wire or radio, except through authorized channels of transmission or reception.

We recognize that laws will not prevent crime, but they will deter most individuals.

Based on the above, it appears that technically qualified and knowledgeable individuals could use the third volume and successfully perform the three interception approaches described therein. Unauthorized aural interception of oral or wire communications and unauthorized disclosure of interstate or foreign communications carried over wire and radio systems are prohibited by Federal law. However, as indicated earlier on page 7, it appears that interception of communications by nonaural means is not prohibited by Federal law.

We believe that technically qualified and knowledgeable individuals could perform the interception techniques described in the third volume to (1) intercept oral or wire communications by aural acquisition and (2) violate the prohibitions of existing Federal law. Protection of the privacy of oral and wire communications was an underlying purpose of the Omnibus Crime Control and Safe Streets Act of 1968. As such, interception of oral or wire communications in violation of the act would be considered an invasion of privacy. On the other hand, interception of communications could be made by nonaural means, and it appears that such interception would not violate existing Federal law. We also believe that qualified and knowledgeable individuals could use Volumes I and II of the Mitre report and, without the benefit of the scenarios described in the third volume, intercept oral or wire communications by both aural and nonaural means. This is because these volumes contain the technical information from which the third volume scenarios were written.

We recognize that the availability of a publication, such as the third volume, could lead to increased interception attempts. Persons without expertise or knowledge could be motivated for various reasons, to make such attempts. However, we believe that there is a direct relationship between the success of an attempt and the expertise and knowledge of the person making the attempt. For example, an inexperienced and un-knowledgeable person might succeed in an attempt at the first scenario described in the third volume but probably would not succeed in attempts at the second and third scenarios.

Thus, it is possible that the publication of the third volume could lead to some instances of privacy invasion that would not occur if it was not available. However, the extent to which privacy may be invaded, or laws violated, depends on the facts of each interception. The number of persons with the motivation and required expertise and knowledge to assure a successful attempt is unknown.

Was the OTP/COTR person on this contract a former NSA employee? Was Mr. Metelski the OTP point of contact (COTR) on the contract in a technical sense?

Mr. Metelski, a former NSA employee, was the COTR and OTP's point of contact for the subject contract. He critiqued Mitre's preliminary draft and final report for its technical content and contract requirements, and made recommendations for clarifying technical terminology to the Mitre study group.

Was anyone at Mitre significantly involved in this contract a former OTP employee?  
Was former OTP employee Charles Joyce, now with Mitre, involved in the performance of the contract?

Charles Joyce, presently employed by Mitre, was a former employee of OTP. Thomas Keller of OTP called Mr. Joyce concerning the capabilities of Mitre because Mr. Keller did not know anyone else at Mitre, and he knew Mr. Joyce during their former association at OTP. Mr. Joyce told Mr. Keller that Mitre had the telecommunications engineering capabilities to perform the study and asked Charles Sanders to contact OTP to determine the requirements of OTP's proposed contract. We found that further involvement by Mr. Joyce was limited to administrative responsibilities--not the performance of the contract.

Did Mr. Joyce cause Mr. Metelski to be hired by OTP?

In discussions with Mr. Joyce, he stated that OTP's Office of General Counsel hired Mr. Metelski and that he (Mr. Joyce) did not cause Mr. Metelski to be hired by OTP.

In our discussion with Mr. Metelski, he stated that during a meeting at OTP, while he was still an employee at NSA, Mr. Joyce mentioned that OTP's Office of General Counsel was looking for someone with a legal and technical background. Mr. Metelski had an interest in OTP's legal policy-making activities, inquired about a position, was interviewed by Mr. Keller, and was subsequently hired.

Mr. Keller stated that he hired Mr. Metelski after determining that Mr. Metelski had the requisite qualifications for the position. He also stated that Mr. Joyce had no part in the hiring of Mr. Metelski.

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