All, this is the most recent Legal presentation from [BLANK] regarding [BLANK]. Please distribute... Thanks [BLANK].

March 23, 2006

UNCLASSIFIED
Cellular Tracking
Legal Issues

March 23, 2006
Overview

- DOJ's Policy on Cellsite Simulators: **Pen Register Device**
  - (18 U.S.C. § 3127(3))
  - Old Law vs. New Law
  - Non-Target users (Privacy Interest)
  - Potential Interference
  - Liability
- Recent Court Decisions on cellsite location data
  - distinguish
- Emergency Pen Register Authority
  - Federal v. State Orders
  - Voluntary Disclosures
- Loan of ELSUR Policy
  - liability
- Protecting Sensitive Techniques
  - Use as evidence
  - Qualified Privilege
New DOJ Opinion:

DOJ/CCIPS: Pen/Trap order to use its own equipment to obtain any "signaling information" transmitted from a cellular telephone to:

1) Identify a target phone or
2) Locate a phone

DOJ: "signaling information" is any non-content information "transmitted by" a telephone instrument
CALEA: technical standard for location parameters (J-STD-025)

- **Origination** (of an outgoing call from target phone)
- **Answer** (at answer of a call terminating to the target phone)
- **Release** (at the end of the call for both incoming and outgoing calls)

Recent Court Decisions

- CALEA prohibits collecting location information "solely pursuant" to a PR/TT
- SCA 18 USC 2703(d)
Guidance

- AND Use a Separate PR/TT order for gear

- Advise of

- Not retain records?
Incidental Collection

(2) advise court of potential for incidental collection on innocent users
Therefore, pursuant to 18 U.S.C. § 3123(d), I request that this application and order be sealed until otherwise ordered by this court; and
IF State Authority: may assist if either:

- **Joint case** (i.e., significant FBI interest and resources—Federal Nexus)

- **Written request from State** for assistance in a purely state matter;

- BOTH Trigger compliance with Loan of ELSUR policy
  - MIOG, Part 2, 16-4.13.4
I am on [redacted] and my boss has talked with you about [redacted] (see below). We used your affidavit and sent it to our AUSA in [redacted]. They have been looking at it and I was told that I may be missing some statutory references. Have you guys ever gotten one of these through? If yes, do you recall the AUSA's name? If they haven't, I am going to give them your name and number so we can figure this thing out.

Thanks

---

Per our discussion, the [redacted] for using [redacted] et al.

---

As per our phone conversation yesterday, the second attachment [redacted] would be the appropriate pony. This document has been provided by [redacted] of OGC.
Thanks,

-----Original Message-----
From: 
Sent: Monday, November 14, 2005 11:57 AM
To: 
Cc: 
Subject: RE:

UNCLASSIFIED
NON-RECORD

Attached is a copy of a DRAFT application and order to authorize

Also is a DRAFT app/order for

-----Original Message-----
From: 
Sent: Monday, November 14, 2005 11:57 AM
To: 
Cc: 
Subject: RE:

UNCLASSIFIED
NON-RECORD

The attached includes some edits (use document/reviewer to see changes).

PRIVILEGED DELIBERATIVE DOCUMENT - NOT FOR DISCLOSURE OUTSIDE THE FBI WITHOUT PRIOR OGC APPROVAL

Assistant General Counsel
Science & Technology Law Unit
Engineering Research Facility
Bldg. 27958A Room A-207B
Quantico, Va. 22135

SCIENCE & TECHNOLOGY LAW UNIT - OFFICE OF THE GENERAL COUNSEL

-----Original Message-----
From: 
Sent: Monday, November 07, 2005 8:49 PM
To: 
Cc: 
Subject: FW:

UNCLASSIFIED
NON-RECORD

We would like to make this document This is our latest draft after provided some input earlier. Please provide legal guidance to ensure we have drafted an appropriate SOP for
Please review and provide feedback. We truly need to improve our response time to an _____________________________. I think an SOP would be a big help.

Thank you,
From: 
Sent: Thursday, July 20, 2006 4:22 PM 
To: 
Cc: 
Subject: RE: Schedule to meet with you?
--- Original Message ---
From: 
Sent: Wednesday, July 19, 2006 2:05 PM
To: 
Cc: 
Subject: Schedule to meet with you?

--- Original Message ---
From: 
Sent: Wednesday, July 19, 2006 2:05 PM
To: 
Cc: 
Subject: Schedule to meet with you?

--- Original Message ---
From: 
Sent: Wednesday, July 19, 2006 2:05 PM
To: 
Cc: 
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From: 
Sent: Wednesday, July 19, 2006 2:05 PM
To: 
Cc: 
Subject: Schedule to meet with you?

--- Original Message ---
From: 
Sent: Wednesday, July 19, 2006 2:05 PM
To: 
Cc: 
Subject: Schedule to meet with you?
FYI: You might want to include a reference to the below—another policy approval requirement before SAs may

The attached includes some edits (use document reviewer to see changes).

PRIVILEGED DELIBERATIVE DOCUMENT - NOT FOR DISCLOSURE OUTSIDE THE FBI WITHOUT PRIOR OGC APPROVAL
We would like to make this document policy ASAP. This is our latest draft after provided some input earlier. Please provide legal guidance to ensure we have drafted an appropriate SOP for

Please review and provide feedback. We truly need to improve our response time to an I think an SOP would be a big help.

Thank you,

UNCLASSIFIED
To All

I agree with most of the provisions of SA and most Divisions will need to tailor the guidelines to their own structure. Specific protocol may need to be amended based on the results of meeting with CID concerning case agent.
I have attached a PDF document provided to me by differences in our authority emanating from DOJ. I believe.

This email does not require a response from anyone - but I welcome ideas that we can present to further our case and cause to CID.

Have a safe holiday season......
Happy Holidays to each and everyone.

See attached "proposed" guidelines. Work with your CDC/AUSA to ensure that the procedures they deem appropriate for your division are followed.

Thanks

From: [Redacted]
Sent: Tuesday December 20, 2005 2:58 PM
To: [Redacted]
Cc: [Redacted]
Subject: Revised SOP for

This from may be of some assistance

I spoke with after her presentation and advised that I'd like a copy of her powerpoint presentation. She said she thought you'd be getting that out to the Field? We're trying to come up with guidelines
From: 
Sent: Thursday, December 22, 2005 10:05 AM
To: 
Subject: 

UNCLASSIFIED
NON-RECORD

Saw your SOP re: You are great - you need to be at HQ writing policy. I attached a copy of policy that may be of some value - if not trash it.

Have a Great Christmas!!!!

SSA

UNCLASSIFIED
FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE Date: 09/02/2005

To: Attn: All Agents

From

Drafted By:

Case ID #: (Pending) (Pending)

Title: Legal Requirements for

Synopsis: This EC explains the legal authority required to

Enclosure(s):
FYI: the attached Wpd doc is the latest in the series of decisions on compelling

-----Original Message-----
From: 
Sent: Monday, October 31, 2005 3:06 PM 
To: 
Subject: FW

-----Original Message-----
From: 
Sent: Wednesday, October 26, 2005 2:46 PM 
To: FBI_ALL CDCs 
Cc: HQ_DIV09_STLU 
Subject: RE:

-----Original Message-----
From: 
Sent: Wednesday, October 26, 2005 1:30 PM 
To: FBI_ALL CDCs 
Cc: HQ_DIV09_STLU 
Subject: 

To Update you on the status of current litigation on the authority to
Please keep us apprised of developments in your district.

Assistant General Counsel
Science & Technology Law Unit
Engineering Research Facility
Bldg. 27958A Room A-207B
Quantico, Va. 22135
There is a rapidly growing trend among magistrate judges throughout the nation...
PRIVILEGED DELIBERATIVE DOCUMENT - NOT FOR DISCLOSURE OUTSIDE THE FBI WITHOUT PRIOR OGC APPROVAL

Assistant General Counsel
Science & Technology Law Unit
Engineering Research Facility
Bldg. 27958A Room A-207B
Quantico, Va. 22135

SCIENCE & TECHNOLOGY LAW UNIT - OFFICE OF THE GENERAL COUNSEL

SENSITIVE BUT UNCLASSIFIED

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SENSITIVE BUT UNCLASSIFIED

CELL/OTD 001217
BACKGROUND

1. On October 19, 2005, the Court granted an ex parte application from the Government seeking an order requiring a provider of cellular telephone service to produce, inter alia, information pertaining to the location of cell site towers receiving a signal from a particular cellular telephone for a period of 60 days. The Court's Order expired on December 18, 2005. Because at least three other district courts have concluded that the Government lacks statutory authority for applications relating to certain types of cell site data, the Court is setting forth the reasons it granted the application in this case. Subsequent to the issuance of the Order, the Court sought additional information and briefing from the Government regarding the application. In addition, the Court asked the Federal Defenders of New York, Inc. to appear as amicus curiae. The Court has greatly benefited from the briefing provided by both sides.

1. BACKGROUND

Cellular telephones communicate by means of signals to cellular telephone towers, which are operated by the various commercial carriers that provide cellular telephone service. As a cell phone user moves from place to place, the cell phone automatically switches to the tower that provides the best reception. In this case, the Government's application sought information on a prospective basis regarding cell towers being signaled by a specifically identified cellular telephone. The application, which remains under seal, furnishes detailed information indicating that the use of the target cellular telephone is engaged in ongoing criminal activity involving the illegal sale of contraband and that a warrant for the arrest of this person is outstanding. An order was previously granted by another Magistrate Judge in this District for cell site information with respect to the same target telephone.

2. In suburban or rural areas, towers can be many miles apart. The Court has examined a map of cellular towers of an area, the towers receiving a signal from a particular cellular telephone. At least one cellular provider will give, in addition to the number of the tower, a digit ("1", "2" or "3") indicating a 120 degree "face" of the tower towards which the cell phone is signaling.

The relevant portions of the application seek, for a period of 60 days, "cell site activations" for the telephone. The application also seeks a directive that the provider of the service furnish a map showing cellular tower "locations/addresses, sectors and orientations" as well as "the physical address/location of all cellular towers in the specified market." In a portion of the application not relevant to the instant opinion, the application seeks numbers dialed, incoming numbers, call durations, and other information relating to the subscriber of the target cellular telephone. The application contains additional provisions requiring that the provider furnish certain assistance to the federal law enforcement agents necessary to comply with the requested court order.

While the application uses the term "cell-site activations," the Government has specified that it seeks "cell-site information concerning the physical location of the antenna towers associated with the beginning and termination of calls to and from a particular cellphone." See Letter to the Court from Thomas A.G. Brown, dated November 22, 2005 ("Gov't Letter"), at 10. This phrasing corresponds roughly to the information that in fact has been obtained by the Government in this District in the past with respect to cell site information. Under prior orders issued in this District, the Government has been able to obtain a list of each call made by the subject cell phone, along with a date, start time and end time. With respect to the beginning or end of the call (and possibly sometimes in between), there is a listing of a three-digit number assigned to a cellphone tower or base station. At least one cellular provider will give, in addition to the number of the tower, a digit ("1", "2" or "3") indicating a 120 degree "face" of the tower towards which the cell phone is signaling.

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a Pen Register and a Caller Identification System on Telephone Numbers (Sealed) and Production of Real Time Cell Site Information, 2005 WL 3160860 (D.Md. Nov. 29, 2005) ("Maryland Decision"). These cases appear to involve requests for cell site information that go beyond both what has been sought in this case and what has actually been received by the Government pursuant to any cell site application in this District. First, the cell site information provided in this District is tied only to telephone calls actually made or received by the telephone user. Thus, no data is provided as to the location of the cell phone when no call is in progress. Second, at any given moment, data is provided only as to a single cell tower with which the cell phone is communicating. Thus, no data is provided that could be "triangulated" to permit the precise location of the cell phone user. Third, the data is not obtained by the Government directly but is instead transmitted from the provider digitally to a computer maintained by the Government. That is, the provider transmits to the Government the cell site data that is stored in the provider’s system. The Government then uses a software program to translate that data into a usable spreadsheet.

II. DISCUSSION

The Government’s application cites to two enactments: the statutes governing the installation of pen registers and trap and trace devices, 18 U.S.C. §§ 3121-27 ("the Pen Register Statute"), and a provision of the Stored Wire and Electronic Communications and Transactional Records Access Act codified at 18 U.S.C. § 2703. We begin our discussion with the text of these statutes inasmuch as "[e]very exercise in statutory construction must begin with the words of the text." Saks v. Franklin Covey Co., 316 F.3d 337, 345 (2d Cir.2003). "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." Robinson v. Shell Oil Co., 519 U.S. 337, 341 (1997) (citations omitted). In general, if the statutory language is not ambiguous, the statute is construed according to the plain meaning of the words. See, e.g., Greenery Rehab. Group, Inc, v. Hammon, 150 F.3d 226, 231 (2d Cir.1998) (citing Rubin v. United States, 449 U.S. 424, 430 (1981)). We look to the legislative history and other tools of statutory construction only if the statutory terms are ambiguous. Id (citing AstraZeneca v. United States Lines, Inc., 7 F.3d 1067, 1073 (2d Cir.1993)).

A. Pen Register Statute

FN1. At one time, a "pen register" referred perforce to a physical device that recorded information regarding outgoing telephone calls. In this District at least, law enforcement agencies do not in all instances need to install a physical device on a telephone line to obtain information regarding these calls. Instead, information that was heretofore captured by a pen register can now be transmitted digitally by the telephone service provider. The Government has properly assumed that, despite this change in technology, it is bound to follow the Pen Register Statute to obtain information otherwise covered by the statute.

FN2. Because the location information is "transmitted" by the cell phone, a pen register (not a trap and trace device) identifies location information for both incoming and outgoing calls. See 18 U.S.C. § 3127(3). On a separate point, amicus contends that the "signaling information" available under the Pen Register Statute is only the "signaling information" that is transmitted during a particular telephone call. See Letter to the Court from Yuanchung Lee, dated October 27, 2005.
("Amicus Letter") at 16. The statute is ambiguous on this point, however. It says only that a pen register records the "signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted." 18 U.S.C. § 3127(3). The term "is transmitted" is susceptible of two meanings: it could refer either to a particular communication or to an ongoing transmission. It is not necessary to reach this issue, however, because here the Government has sought only cell-site information tied to telephone calls.

In addition, construing the pen register definition as covering the capture of cell site data is the only way to make sense of a separate statute: 47 U.S.C. § 1002. As described in the next section, that statute specifically assumes that cell site data is available under the Pen Register Statute.

Notably, the showing required to install a pen register is a low one: the Government need only identify the law enforcement agency conducting the investigation and certify that the information likely to be obtained is "relevant to an ongoing criminal investigation" being conducted by the agency. 18 U.S.C. § 3122(b)(1), (2). Orders requiring the installation of a pen register may not exceed 60 days, though they may be extended for additional 60-day periods if the required showing is made. 18 U.S.C. § 3123(c). In certain emergency situations, a pen register may be installed even in the absence of a court order. 18 U.S.C. § 3125. The Pen Register Statute explicitly excludes from its definition "the contents of any communication"--an exclusion not relevant to the instant application as there is no effort to obtain the contents of any telephone calls. See 18 U.S.C. § 3127(3).

*4 The Government has certified that the cell site information it seeks here is "relevant and material to an ongoing investigation." Thus, the Pen Register Statute would by itself provide authority for the order being sought by the Government were it not for a provision codified elsewhere in the United States Code. That provision occurs in an "exception" clause within 47 U.S.C. § 1002, which is entitled "Assistance capability requirements."

B. 47 U.S.C. § 1002

Section 1002 was enacted as part of the Communications Assistance for Law Enforcement Act of 1994. It requires telecommunications carriers to ensure that their equipment is capable of providing a law enforcement agency with information to which it may be entitled under statutes relating to electronic surveillance. Section 1002 provides, in pertinent part, as follows:

a telecommunications carrier shall ensure that its equipment, facilities, or services that provide a customer or subscriber with the ability to originate, terminate, or direct communications are capable of--

(2) expeditiously isolating and enabling the government, pursuant to a court order or other lawful authorization, to access call-identifying information that is reasonably available to the carrier--

(A) before, during, or immediately after the transmission of a wire or electronic communication (or at such later time as may be acceptable to the government); and

(B) in a manner that allows it to be associated with the communication to which it pertains,

except that, with regard to information acquired solely pursuant to the authority for pen registers and trap and trace devices (as defined in section 3127 of Title 18), such call-identifying information shall not include any information that may disclose the physical location of the subscriber (except to the extent that the location may be determined from the telephone number):


The phrase "information that may disclose the physical location of the subscriber" in the exception clause can reasonably be interpreted to encompass the prospective cell site information being sought by the Government here, although, as already discussed, the information the Government obtains in this District "discloses[ ] the physical location" of the subscriber in only the roughest manner. [FN3]

FN3. A literal reading of this exception clause might lead one to question whether it is of any relevance at all to the Government's application inasmuch as the clause is framed only as an exception to the sort of "capabilities" a carrier is obligated to "ensure" that it possesses. Under this reading, the exception clause merely states that a carrier is not obligated to ensure that it possesses the capability to disclose physical location information. The clause says nothing about whether the carrier should or should not disclose such information. Nor does it say anything about whether the Government may obtain an order for such information. As is described below, however, the legislative history relevant to this provision reflects that a literal reading of this kind would be at odds with the intention of Congress.

The effect of the exception clause is not obvious at first glance. But the clause plainly reflects an underlying assumption that physical location data would have been obtainable under the Pen Register Statute in the absence of the exception clause. Otherwise, it would have been unnecessary to add the exception clause at all. Indeed, the legislative history of section 1002 states as much. See H. Rep. 103-827(I), reprinted in 1994 U.S.C.C.A.N. 3489, 3497, 1994 WL 557197, at *17 (Oct. 4, 1994) ("Currently, in some cellular systems, transactional data that could be obtained by a pen register may include location information."); S. Rep. 103-402, available at 1994 WL
FN4. In fact, the definition of a "pen register" in effect at the time of the exception clause's passage did not seem to include cell site or location information, inasmuch as the term "pen register," prior to the USA PATRIOT Act amendment in 2001, had been defined as a device that identified "the number dialed or otherwise transmitted." See Pub.L. No. 99-508, § 301, 100 Stat. 1848 (Oct. 21, 1986). Nonetheless, Congress obviously thought such information was available under the Pen Register Statute when the exception clause was enacted in 1994.

*5 But if the exception clause of 47 U.S.C. § 1002(a)(2) is read to mean that a pen register may not be used at all to deliver cell site information to the Government, then the Government may not acquire cell site information by any mechanism. This is because the Pen Register Statute is clear that the device that captures cell site information—that is, a "pen register"—may be installed only pursuant to the Pen Register Statute itself. As noted, the Pen Register Statute defines a pen register as a device that provides "signaling information" (e.g., cell site information). See 18 U.S.C. § 3127(3). At the same time, the Pen Register Statute states unequivocally (with exceptions not relevant here) that "no person may install or use a pen register ... without first obtaining a court order under section 3123"—that is, pursuant to a court order issued under the Pen Register Statute itself. See 18 U.S.C. § 3121(a). Taken together, the two sections require that prospective cell site information may be obtained only pursuant to the Pen Register Statute. If the exception clause in 47 U.S.C. § 1002(a)(2) is read to mean that the Pen Register Statute may not be used in any form to obtain cell site information, as is urged by amicus and the other cell site cases, the exception clause in combination with section 3121(a) would constitute a directive that cell site information was not obtainable by any mechanism at all.

Amicus and the other cell site cases do not address this question and simply assume that 47 U.S.C. § 1002(a)(2) means that some mechanism other than the Pen Register Statute may be used to obtain cell site information as long as this mechanism stands on its own—that is, as an independent ground authorizing the collection of cell site data. The cell site cases believe a search warrant under Fed.R.Crim.P. 41 is the appropriate mechanism, see, e.g., Texas Decision, 396 F.Supp.2d at 757, and amicus asserts that it is the Title III wiretap statute, see Letter to the Court dated December 6, 2005 from Yuanchung Lee, at 5-6. But, again, this reading fails to give effect to the explicit directives contained in the Pen Register Statute that a pen register—which is defined to include a device providing cell site information—can be installed only pursuant to "a court order under section 3123 of [Title 18]." 18 U.S.C. § 3121(a). In other words, Fed.R.Crim.P. 41 or Title III cannot by themselves provide authority for the Government's application because any warrant or order issued pursuant to those mechanisms must necessarily authorize the installation of a "pen register."

If the cell site cases and amicus were correct in their interpretation of the exception clause—that is, that it constitutes a simple direction that no cell site information may be obtained pursuant to the Pen Register Statute—this Court might conclude that Congress intended that the Government could not obtain cell site information by any means. However, the exception clause in fact does not contain a direction that no cell site information may be obtained "pursuant" to the Pen Register Statute. Instead, it states that cell site information may not be obtained "solely pursuant" to the Pen Register Statute. 47 U.S.C. § 1002(a)(2). The phrase "solely pursuant" is an unusual one—so unusual that the only time it appears in the United States Code is in 47 U.S.C. § 1002(a)(2). [FN5]

FN5. The phrase "only pursuant" appears several dozen times in the United States Code. But in each instance the phrase is used to direct affirmatively how an act is to be done—for example, to direct that judicial review of an order may be obtained "only pursuant" to a particular statutory provision. 49 U.S.C. § 46301(d)(7)(D)(iii). Here, however, the exception clause authorizes something to be done as long as it is not done "solely pursuant" to a particular statutory provision. Thus, the statute using "only pursuant" provide no assistance in our interpretation.

*6 The use of the word "solely" is significant. "Solely" means "without another" or "to the exclusion of all else." See Merriam-Webster's Collegiate Dictionary (10th ed.2000), at 1114. If we are told that an act is not done "solely" pursuant to some authority, it can only mean that the act is done pursuant to that authority "with [ ] another" authority. Id. As a result, the use of the word "solely" in section 1002 necessarily implies that "another" mechanism may be combined—albeit in some unspecified way— with the Pen Register Statute to authorize disclosure of cell site information.

As just noted, amicus and the other cell-site cases read the exception clause as a direction to the Government to rely exclusively on some other mechanism to obtain the cell-site information and to rely on that other mechanism alone. We have already pointed out one problem with this reading—that it results in a contradiction in the terms of the Pen Register Statute and 47 U.S.C. § 1002. But there is a second problem, which is reflected in section 1002 itself. If section 1002 means that the Pen Register Statute cannot be relied on whatsoever to obtain cell site information, it would have been sufficient for the statute's drafter to use the word "pursuant" rather than the phrase "solely pursuant." In other words, the use of the word "pursuant" would have been enough by itself to give a clear direction.
that cell-site information cannot be obtained under the Pen Register Statute. Given the doctrine that "we must, if possible, construe a statute to give every word some operative effect," *Cooper Industries, Inc. v. Aviall Services, Inc.*, 125 S.Ct. 577, 584 (2004), the word "solely" must be given semantic content if it is possible to do so. The most reasonable reading of the word "solely" is that if cell-site information is not being obtained "solely" pursuant to the statute, it is being obtained pursuant to the opposite of "solely": that is, not "alone" but in combination with some other mechanism.

While we have extracted some semantic content out of the word "solely," it has hardly been a satisfying exercise inasmuch as we are left with the conclusion that Congress has given a direction that cell site information may be obtained through some unexplained combination of the Pen Register Statute with some other unspecified mechanism. As unsatisfying as this result is, the only alternative is either (1) to ignore the plain dictate of 18 U.S.C. § 3121(a) by assuming that 47 U.S.C. § 1002 means that some other mechanism may be used to intercept "physical location" information if it can do so on an independent basis, or (2) to ignore Congress's inclusion of the otherwise unnecessary word "solely" and conclude that ongoing cell site data is not obtainable at all.

We reject the first choice as it requires us to ignore a clear statutory command. Nor can we accept the second choice because it requires us to conclude that Congress intended that ongoing cell site location information could not be obtained by any means at all. Congress, however, plainly manifested its intention to the contrary. First, as noted, any such interpretation necessarily reads the word "solely" out of the exception clause. If Congress had intended that no prospective cell site data be obtainable, it would have simply said in the exception clause that physical location information could not be obtained "pursuant" to the Pen Register Statute.

*7 Second, the only legislative history that directly bears on the meaning of the exception clause—consisting of a prepared statement of former Federal Bureau of Investigation ("FBI") director Louis Freeh—reflects that the § 1002 exception was put in at the suggestion of the FBI itself, as a way of assuring Congress that the FBI would rely on mechanisms—referred to as "court orders and subpoenas"—other than the Pen Register Statute to obtain physical location information, including cell site data. See *Police Access to Advanced Communication Systems: Before the Subcommittee on Technology and the Law of the Committee on the Judiciary United States Senate and the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary House of Representatives* (1994) (statement of FBI Director Louis J. Freeh) ("Freeh Statement"). available at 1994 WL 223962. ("Even when such generalized location information, or any other type of 'transactional' information, is obtained from communications service providers, court orders or subpoenas are required and are obtained."). Thus, it would not make sense for Congress to have taken Director Freeh up on his proposal by barring law enforcement agencies from obtaining cell site information entirely.

Third, the District of Columbia Circuit, in considering the "solely pursuant" exception in the context of a Federal Communications Commission's rule-making proceeding, approved of the FCC's decision that section 1002 "simply imposes upon law enforcement an authorization requirement different from that minimally necessary for use of pen registers and trap and trace devices." *United States Telecom Ass'n*, 227 F.3d at 463 (citing *In the Matter of Communications Assistance for Law Enforcement Act*, 14 F.C.C.R. 16794, 16815, ¶ 44 (1999)). The plain import of this statement is that law enforcement agencies would be able to get authorizations to obtain cell site information from some mechanism, although the Government would have to meet an authorization requirement different from the minimal standard provided in the Pen Register Statute.

Having rejected the two alternatives—that is, that cell site data can be obtained without reliance on the Pen Register Statute or that it is not obtainable at all—we are back at the originally discussed reading of the word "solely." We thus conclude that Congress expected physical location information—including cell site information—would be obtainable by the Government by using some mechanism in combination with the Pen Register Statute. The idea of combining some mechanism with as yet undetermined features of the Pen Register Statute is certainly an unattractive choice. After all, no guidance is provided as to how this "combination" is to be achieved. But, again, in light of the language used in section 1002, the Court believes that it is the only choice possible.

The next question is (1) whether the other mechanism relied on by the Government—18 U.S.C. § 2703—is an appropriate mechanism to "combine" with the Pen Register Statute, and (2) if so, how section 2703 should be "combined" with the Pen Register Statute. To answer these questions, we turn to an examination of section 2703.

C. Section 2703

*8 Section 2703 contains three main sections that authorize the Government to obtain records. Two are not relevant here: section 2703(a) authorizes disclosure of the contents of wire or electronic communications held by a "provider of electronic communication service" and section 2703(b) authorizes disclosure of the contents of wire or electronic communications in a "remote computing service ."

Section 2703(c)(1)—the section relied upon by the Government—provides that a "governmental entity may require a provider of electronic communication service or remote computing service to disclose a record or other information pertaining to a subscriber to or customer of
such service (not including the contents of communications)," provided the Government "offers specific and articulable facts showing ... reasonable grounds to believe that ... the records or other information sought, are relevant and material to an ongoing criminal investigation" under 18 U.S.C. § 2703(d). A separate portion of section 2703 provides that basic subscriber information—such as name, address and duration of calls—need not even meet this threshold showing but is obtainable merely by subpoena. See 18 U.S.C. § 2703(c)(2). The Government may obtain additional information about a subscriber under 18 U.S.C. § 2703(c)(1)(B) as long as the "specific and articulable facts" standard is met.

The first question that arises is whether prospective cell site data is encompassed in the phrase "record or other information pertaining to a subscriber to or customer of [an electronic communication] service."

Certainly, prospective cell site data is "information," and it may also be said—in this District at least—to be in the form of a "record" inasmuch as cell site information is transmitted to the Government only after it has been in the possession of the cell phone company. Cell site data also "pertain[es]" to a subscriber to or customer of cellular telephone service. The remaining question is whether cellular telephone service constitutes an "electronic communication service." According to 18 U.S.C. § 2711(1), we must turn to 18 U.S.C. § 2510 for the definition of this term. Section 2510 defines an "electronic communication service" to mean "any service which provides to users thereof the ability to send or receive wire or electronic communications." 18 U.S.C. § 2510(15).

The phrase "electronic communication" is itself defined. Section 2510(12) provides that "electronic communication" means "any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce." With the definition taken thus far, it would be plain that a user of a cellular telephone is a "customer of an electronic communication service" under section 2703(d) since the cellular telephone makes transmissions to a tower through an electromagnetic system. See generally http://www.fda.gov/cellphones/qa.html#I (wireless phones rely on radio-frequency energy, which is a form of electromagnetic energy).

9 Amicus argues, however, that an exception contained in the definition of "electronic communication" in section 2510(12) is of importance here. Amicus Letter at 8. The exception states that an "electronic communication ... does not include ... any communication from a tracking device (as defined in section 3117 of this title)." 18 U.S.C. § 2510(12)(C). Section 3117 in turn defines a tracking device as "an electronic or mechanical device which permits the tracking of the movement of a person or thing." 18 U.S.C. § 3117(b).

Because a cellular telephone arguably has the capability of being a "device which permits ... tracking"—in addition to its normal voice and data transmission uses—we must determine if the tracking device exception to the definition of "electronic communication" means that a cellular telephone service subscriber is not in fact a "customer of an electronic communication service" under section 2703(c).

To understand the import of this exception, it is necessary to examine what "service" is being provided to the customer of a cellular telephone. This is because the term "electronic communication" is used in section 2703 to describe the sort of "service" that an individual subscribes to or is a customer of, and the Government may only obtain "records or other information" pertaining to such a person. Section 2510(15) says that the relevant service is a service that provides to users thereof the ability to "send or receive ... electronic communications." The exception in section 2510(12)(C) tells us only that "tracking" information is not considered to be an electronic communication. But this exception does not alter the fact that the cellular telephone service that the customer uses and to which the subscriber subscribes is nonetheless an "electronic communication service" under section 2510(15).

We next turn back to section 2703, which governs "information" pertaining to "customers and users" of electronic communications service. It is certainly the case that cell site or tracking information constitutes "information" pertaining to customers or users of electronic communications services. Thus, such cell site or tracking information comes within section 2703(c) and consequently is the sort of "information" that the Government may seek pursuant to an order under section 2703(d).

The objection to this reading, see Amicus Letter at 8-9, appears to be as follows: section 2703(c) governs information pertaining to electronic communication services. The definition of "electronic communication" in section 2510(12)(C) excludes tracking information. Therefore, the Government cannot get under section 2703 the tracking information a cell phone provides.

The problem with this syllogism is that it assumes that the term "information" in section 2703(c) is limited by the definition contained in section 2510. In fact, section 2510 does not speak to the scope of the term "information" in section 2703. Rather, section 2510 speaks only to the meaning of the term "electronic communication service," which it defines broadly as a service that "provides to users thereof the ability to send or receive ... electronic communications." Thus, the term "electronic communications service" in section 2703(c) refers broadly to the "service" of providing users with the "ability to send or receive ... electronic communications." It does not refer to any one particular piece of information, such as cell site
information, that might be obtainable from the device carried by the user of the service. While tracking information is not to be considered part of "electronic communications" pursuant to the exception contained in 2510(12)(C), this does not alter the fact that the cellular telephone service to which a cellphone customer subscribes necessarily comes within the definition of section 2510(15). After all, the service a cellular telephone company "provides to users" is the ability to make cellular telephone calls, not exclusively tracking information. Inasmuch as a service that provides, cellular telephone capabilities is within section 2510(15), information pertaining to a subscriber to or customer of that "service" is obtainable under section 2703(c).

*10 In other words, information on the location of cell towers is not the "service" to which a cellular customer subscribes. Instead, the user subscribes to the voice—and perhaps data—transmission capabilities provided by the cellular carrier. Although tower location information may be a necessary ingredient for the operation of that service, the "service" to which the user subscribes is still the "electronic communication" capabilities of the cellular telephone. Section 2703(c) tells us broadly that the Government may obtain "information" pertaining to users of this sort of service. Cell site information is just one of many possible categories of "information" that pertains to users of this service. The exception in section 2510(12)(C) does not purport to limit the meaning of the term "information." [FN6]

FN6. There is potentially an independent reason why the exception clause in section 2510(12)(C) does not limit the Government's ability to obtain cell site information under section 2703. The exception clause points to sections 3117 for the definition of a tracking device. Section 3117, however, is a statute that refers to a tracking device that has been "installed" at the behest of the Government. 18 U.S.C. § 3117(a). Here, however, no tracking device has been "installed."

It may seem anomalous that the Government may obtain under section 2703 a particular category of information pertaining to a user of electronic communications that is excepted from the term electronic communications itself. But this is not surprising given the multiple purposes that the section 2510(12)(C) exception serves. The definitions in section 2510 apply across the board to (1) wiretaps; (2) section 2703 applications; and (3) Pen Register Statute applications. See 18 U.S.C. §§ 2510 (introductory clause); 2711(1); and 3127(1). There is no suggestion in the structure of the statutes that the section 2510(12)(C) exception was meant to limit in any way the "information" that the Government was entitled to get under section 2703(c).

In light of the analysis so far, section 2703(c)'s use of the term "information" would cover the prospective cell site data being sought here. At least some of the cell site cases recognize that the term "information" includes historical cell site information. See Texas Decision, 396 F.Supp.2d at 759 n. 16; EDNY Decision, 396 F.Supp.2d at 313; Maryland Decision, 2005 WL 3160860, at *4; see also Amicus Letter at 12. They question, however, whether cell site information not yet in existence at the time of the order—that is, prospective or what is colloquially referred to as "real time" data—may be included in the term "information."

The text of the statute itself contains no limitation of this kind. Some courts have pointed to the title of the chapter in which the statute appears—the "Stored Wire and Electronic Communications and Transactional Records Access"—as harboring some importance in this regard. See Texas Decision, 396 F.Supp.2d at 760. But this title is of limited significance for two reasons. First, it refers to types of data—"communications" and "records"—that are narrower than one of the actual terms in section 2703(c): "information." Second, and more significantly, even the data being obtained regarding the location of the cell phone is in fact "stored" by the carrier—at least in this District. Cell site information is not obtained directly by the Government. Instead, it is transmitted to the Government only after it has come into the possession of the cellular telephone provider in the form of a record.

*11 The question of "historical" versus "real time" data is still of some significance, however. While the data the Government seeks can appropriately be characterized as "stored" or "historical" records by the time the Government gets possession of them, the Government wants that information on an ongoing basis. That is, it wants a continuing order for the cell phone company to provide the stored records in the future.

Amicus and the cell site cases have properly pointed to aspects of 2703 that make it unsuited to requiring the carrier to provide cell site data on an ongoing basis. Amicus Letter at 12. The two related statutes that plainly permit transmission of information to the Government on an ongoing basis—the Pen Register Statute and Title III—both contain limitations, 60 days and 30 days respectively, that cap the duration of any prospective orders. See 18 U.S.C. § 3123(c)(1); 18 U.S.C. § 2518(5). Section 2703, by contrast, contains no such time limitation. In a similar vein, the Pen Register Statute and Title III contain automatic sealing provisions, see 18 U.S.C. § 2518(8)(b) and 3123(4)(1)—provisions that are obviously important to the Government when obtaining ongoing information—whereas section 2703 does not.

These omissions, however, are understandable when considered in the context of the discussion presented thus far. Amicus and the cell site cases have conducted their analysis of section 2703 as an effort to determine whether Congress "intended" section 2703 to cover prospective cell site data. See, e.g., Texas Decision, 396 F.Supp.2d at 760;
Amicus Letter at 11-12. But there is no reason to believe that section 2703 was specifically enacted as the mechanism to cover such cell site data inasmuch as the Pen Register Statute professes to be the only statute that authorizes the installation of the device used to capture this sort of data, i.e. "signaling information." See 18 U.S.C. § 3121(a).

Section 2703, however, remains an appropriate candidate as a legal mechanism that could properly be "combined," as contemplated by 47 U.S.C. § 1022(a)(2), with the Pen Register Statute to obtain cell site locations. This is because the text of section 2703(c) covers the data the Government seeks here. The heart of the statute—granting authority to obtain "information" about cell phone customers—does not on its face contain any limitation regarding when such information may come into being. It is thus susceptible to an interpretation that the "information" sought might come into being in the future. Moreover, because cell site data in this District exists as a record before it is transmitted to the Government, the text of the statute does not prevent the Government from presenting daily or hourly (or even more frequent) applications to the Court to obtain historical cell site data. Thus, as a theoretical matter, the statute permits the Government to obtain cell site data on a continuing or ongoing basis even under a narrow reading of section 2703.

*12 The principal reason why the statute does not serve easily as a fully independent source of authority for providing such data is a structural one: the statute does not contain certain procedural features, such as a time limitation, that Congress has typically included in statutes that permit the gathering of ongoing information. But this is an understandable omission given that Congress envisioned a pen register as the mechanism that would be used to capture cell site data, and the Pen Register Statute contains the procedural features missing from section 2703. In other words, the Pen Register Statute contains the time limitation (and sealing) provisions that are tied to the very "device"—that is, the pen register—that Congress deemed necessary to obtain prospective cell site information. It is thus logical to conclude that these two statutes in combination contain the necessary authority contemplated by Congress in 47 U.S.C. § 1002.

Section 2703 is an appropriate mechanism to "combine" with the Pen Register Statute for yet another reason. As the District of Columbia Circuit recognized, and as is implicit from the statement presented by Director Freerh, the objection to using the Pen Register Statute alone for the purpose of obtaining cell site data was that it contained a "minimal[ ] authorization requirement. United States Telecom Ass'n, 227 F.3d at 463 (citing In the Matter of Communications Assistance for Law Enforcement Act, 14 F.C.C.R. 16794, 16815, ¶ 44 (1999)). Thus, the District of Columbia Circuit concluded that the section 1002 exception "simply imposes upon law enforcement an authorization requirement different from that minimally necessary for use of pen registers and trap and trace devices." Id. Section 2703, by contrast, contains a higher authorization requirement than that required for a pen register. While the Pen Register Statute permits disclosure of information upon the mere showing that the information likely to be obtained is "relevant to an ongoing criminal investigation" being conducted by the agency, 18 U.S.C. § 3122(b)(2), section 2703 requires the Government to offer "specific and articulable facts showing... reasonable grounds to believe... the records or other information sought, are relevant and material to an ongoing criminal investigation." See 18 U.S.C. § 2703(d). Using section 2703 thus fulfills the apparent purpose of the section 1002 exception: to require something different from the "minimal[ ]" authorization requirement imposed by the Pen Register Statute.

Of course, amicus and the cell site cases suggest that Fed.R.Crim.P. 41 or Title III are better mechanisms than section 2703 to obtain the cell site information. They rely on them, however, based in part on their belief that the non-pen-register mechanism for obtaining cell-site data must operate independently of the Pen Register Statute. FN7

But once this proposition is rejected, section 2703 is a far more obvious source of authority since it covers the very sort of information that is being sought under the warrant. Its only failing is that it does not explicitly allow for the continuous release of such information. Certainly, Title III does not represent an appropriate fit for cell site information inasmuch as its purpose is to govern the interception of the "contents" of communications. See, e.g., 18 U.S.C. §§ 2510(4), 2511(1); United States v. New York Tel. Co., 434 U.S. 159, 167 (1977) (pen registers not within Title III because they do not acquire the "contents" of communications).

FN7. Their reliance is also based on the belief that a cell phone is transformed into a "tracking device" when prospective cell site data is sought. For reasons discussed further in the next section, the requirements that attach to tracking devices are not relevant here.

*13 In sum, section 2703 is the most obvious candidate to be used in combination with the Pen Register Statute to authorize the ongoing collection of cell site information because it covers cell site information generally. Section 2703's absence of procedural provisions that typically attach to the transmission of ongoing information is explained by the fact that the pen register is the proper "device" to obtain cell-site information. Thus the Pen Register Statute's procedural provisions that are tied to such a device are appropriately combined with an application under section 2703 to obtain such information.

D. Effect of the Fourth Amendment

The only remaining question is whether the issuance of a court order for cell site information under section 2703 and the Pen Register Statute is unconstitutional because it violates the Fourth Amendment's prohibition against.....
F.3d at 459 ("Smith's reason for finding no legitimate expectation of privacy in dialed telephone numbers--that callers voluntarily convey this information to the phone company in order to complete calls--applies as well to much of the information provided by the challenged capabilities.") (quoting Texas Decision, 396 F.Supp.2d at 756-57). The Court need not reach this question because the only information being sought by the Government here is information tied to an actual telephone call. [FN9]

*FN9. United States v. Forest, 355 F.3d 942, 951 (6th Cir.2004), suggests in dictum that there might be a Fourth Amendment concern where a law enforcement agent purposely dialed the target cellphone in order to obtain location data. The court viewed such an act as demonstrating that the user was not voluntarily providing the cell site data. Here, we have no request to authorize such an act.

Conclusion

*FN8. The tracking device statute, 18 U.S.C. § 3117, is of no relevance at all because it provides no guidance on what showing must be made to install a tracking device. It states only that "If a court is empowered to issue a warrant or other order for the installation of a mobile tracking device within the jurisdiction of the court, and outside that jurisdiction if the device is installed in that jurisdiction." 18 U.S.C. § 3117(a) (emphasis added); see also United States v. Gbemisola, 225 F.3d 753, 758 (D.C.Cir.2000) ("section 3117 does not prohibit the use of a tracking device in the absence of conformity with the section"). Not only is the statute prefaced by a conditional clause, the statute itself contemplates that a tracking device may be installed merely pursuant to an "order"--that is, without a warrant and thus without a probable cause showing. And, of course, it contemplates the "installation" of a tracking device which has not been sought here.

In any event, the case most strongly relied on by amicus, United States v. Karol, 468 U.S. 705 (1984), held only that the installation of a true tracking device without the knowledge of the person it was tracking must be the subject of a warrant if the device discloses its location inside someone's home and that information could not have been obtained by observation. 468 U.S. at 714; cf. United States v. Knotts, 460 U.S. 276, 282 (1983) (no warrant required where the installed tracking device reveals information observable from a public highway). Here, however, the Government does not seek to install the "tracking device": the individual has chosen to carry a device and to permit transmission of its information to a third party, the carrier. As the Supreme Court has held in the context of telephone numbers captured by a pen register, the provision of information to a third party does not implicate the Fourth Amendment. See Smith v. Maryland, 442 U.S. 735, 744 (1979); see also United States Telecom. Ass'n v. FCC, 227
UNCLASSIFIED
NON-RECORD

Interesting. In light of recent Magistrate views, we might well see more.

At any rate, isn't it typically the case that you discuss-

What's your preference?

PRIVILEGED DELIBERATIVE DOCUMENT - NOT FOR DISCLOSURE OUTSIDE THE FBI WITHOUT PRIOR OGC APPROVAL

Assistant General Counsel
Science & Technology Law Unit
Engineering Research Facility
Bldg. 27958A Room A-207B
Quantico, Va. 22135

---Original Message-----
From: [Redacted]
Sent: Saturday, October 22, 2005 3:27 PM
To: [Redacted]
Cc: [Redacted]
Subject: RE: Standard Operating Procedure (SOP) for Case Agents Requesting

UNCLASSIFIED
NON-RECORD

Thank you for your reply. As for your question:
I am currently digesting the rest of the information you sent me. It is extremely helpful. I am going to draft a separate SOP and send it to you for your review. Just to make sure I understand the legal matters.

Thanks again.

-----Original Message-----
From: L I
Sent: Wednesday, October 12, 2005 1:00 PM
To: 
Cc: 
Subject: RE: Standard Operating Procedure (SOP) for Case Agents Requesting

UNCLASSIFIED
NON-RECORD

I'll defer to the policy issues, as I understand is trying to address some similar issues directly with.

By way of background, last year.
The attached file is the first draft of a proposed SOP to assist case agents who request

Boss (SSA ), as we spoke yesterday this is the first draft.

Squad members, please review and provide input. Thanks.

as this largely pertains to your squad, would you please review and provide any suggestions or input? Thanks.

when you have a moment, would you see if I missed anything? Thanks.

when you too have a moment, would you be so kind as to review the attachment for legal considerations? If you could provide more details regarding a useable procedure for that would be great. We really need to determine the quickest procedure for

Thank you all,
RE Cheat Sheets for the SENSITIVE BUT UNCLASSIFIED NON-RECORD 

Thanks for the guides. I will have the guys review the cheat sheets and look forward to reviewing the SOP. Please let ERF review the SOP so we can run them by the Criminal Division for approval. Before any policy can be distributed, it needs to be run by the substantive desks at FBIHQ and OGC. This SOP will actually help our (ERF) efforts in establishing an SOP with FBIHQ for_____. Keep up the good work.

SSA _______ 
Unit Chief  

--- Original Message ---
From: 
Sent: Wednesday, October 26, 2005 11:34 AM 
To: 
Cc: 
Subject: Cheat Sheets for the SENSITIVE BUT UNCLASSIFIED NON-RECORD 

Enclosed is a "cheat sheet" for dummies guide on the_____. Please review and let me know if you have any questions.

SSA _______
UNCLASSIFIED
NON-RECORD

The attached includes some edits (use document reviewer to see changes).

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Assistant General Counsel
Science & Technology Law Unit
Engineering Research Facility
Bldg. 27958A Room A-207B
Quantico, Va. 22135

SCIENCE & TECHNOLOGY LAW UNIT - OFFICE OF THE GENERAL COUNSEL

---Original Message---
From: [Redacted]
Sent: Monday, November 07, 2005 8:49 PM
To: [Redacted]
Cc: [Redacted]
Subject: FW: [Redacted]

UNCLASSIFIED
NON-RECORD

We would like to make this document [Redacted]. This is our latest draft after [Redacted] provided some input earlier. Please provide legal guidance to ensure we have drafted an appropriate SOP for [Redacted].
Please review and provide feedback. We truly need to improve I think an SOP would be a big help.

Thank you,
The attached includes some edits (use document/reviewer to see changes).

PRIVILEGED DELIBERATIVE DOCUMENT - NOT FOR DISCLOSURE OUTSIDE THE FBI WITHOUT PRIOR OGC APPROVAL

Assistant General Counsel
Science & Technology Law Unit
Engineering Research Facility
Bldg. 27958A Room A-207B
Quantico, Va. 22135

We would like to make this document policy ASAP. This is our latest draft after provided some input earlier. Please provide legal guidance to ensure we have drafted an appropriate SOP for
-----Original Message-----
From: sa
Sent: Tuesday, October 25, 2005 4:05 PM
To: 
Cc: 
Subject:

UNCLASSIFIED
NON-RECORD

Please review and provide feedback. We truly need to improve. I think an SOP would be a big help.

Thank you,
I'll defer to [ ] the policy issues, as I understand [ ] is trying to address some similar issues directly with [ ].

By way of background, last year
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Squad members, please review and provide input. Thanks.

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When you too have a moment, would you be so kind as to review the attachment for legal considerations? If you could provide more details regarding a useable procedure for that would be great. We really need to determine the quickest procedure for

Thank you all,
(U) Security Addendum to requisition

(U) The above-referenced procurement request was reviewed in order to make a determination as to whether it should be relieved of the "full and open competition" requirements of the FAR, for security reasons.

[X]

(S)

(S)

(U) Inasmuch as advertisement of this procurement is recommended that no advertisement be made.

May 6, 2004

Security Officer
Investigative Technology Division

Derived From: G-3

***SECRET***

CELL/OTD 001359
(U) Full and open competition of referenced procurement requirement could have been used. It is recommended that no advertisement be made.

April 29, 2003

Security Officer
Investigative Technology Division

Derived From: G-3
Declassify On: X1
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Shipping / insurance

Recommend by: Unit Chief
Requested by/Deliver to: Federal Bureau of Investigation
ERF Building 27955A, Quantico, VA22135

Total

SPECIAL INSTRUCTION:
Ship to Code:
Delivery Restrictions: M-F 8am-4:30pm, except holidays
Government's Estimate: See attached EC
Previous PO #
Previous Contract #

JUSTIFICATION FOR THE PURCHASE OF NONEXPENDABLE ITEM:

CELL/OTD 001362
FEDERAL BUREAU OF INVESTIGATION

Precedence: IMMEDIATE

To: Finance

Attn: [Blank]

Criminal Investigative

Attn: [Blank]

Precedence: IMMEDIATE

Date: 05/04/2004

From: Investigative Technology

Contact: EE

Approved By: [Blank]

Drafted By: [Blank]

Case ID #: (U) 268-HO-1068430

(S)

(U)

Title: [Blank]

(S)

(S)

Synopsis: [Blank]

(U) Derived From: G-3

Declassify On: X1

SECRET

CELL/OTD 001303
The following reasons assist in explaining why:

(U) Other companies would probably require a substantial monetary investment and possibly years of development time to make systems that could provide the same capabilities and compete on the same level as the requested system.

(U) All of these reasons support the claim that it is in the FBI's best interest to acquire the requested systems. Funding for this procurement is available from Budget Item Subobject Classification.

NON-ADVERTISEMENT STATEMENT
Sole Source Justification for
07/07/04

1. Identification of the agency and the contracting activity, and specific identification of the document as a "Justification for other than full and open competition". - not sure what you want here??

2. Nature and/or description of the action being approved.

3. A description of the supplies or services required to meet the agency's needs

MINIMUM SALIENT REQUIREMENTS

SECRET

CELL/OTD 001369
4. Identification of the statutory authority (Contracting Officer will complete this question) (OMIT)

5. A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the authority cited.

6. A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a notice was or will be publicized as required by Subpart 5.2 and, if not, which exception under 5.202 applies.

7. A determination by the Contracting Officer that the amount is fair and reasonable (OMIT)

8. A description of the market research conducted and the results or a statement of the reason market was not conducted.

(S)
9. Any other facts supporting the use if other than full and open competition such as: example follow on work; etc.

10. A listing of the sources, if any, that expressed, in writing, an interest in the acquisition. None.

11. A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required.

The FBI could initiate a developmental effort with another vendor to design, develop and manufacture equipment capable of meeting the minimum salient requirements. However, due to the urgent and compelling need and exorbitant costs associated with 'reinventing-the-wheel' it is in the FBI's best interest to use the most expedient, cost-effective solution. This solution would be to procure existing, commercially available equipment.
ACQUISITION PLAN

FEDERAL BUREAU OF INVESTIGATION

1. Unit/Section/Division: ITD

2. Description of Requirement:

3. Estimated Cost:

4. Term of Contract:

5. Distribution of Dollars:
   FY- 04
   FY-
   FY-
   FY-

6. Subobject Class/Budget Item:
   Product or Service Code: n/a

7. Market Research (state how performed & attach):
   Market survey conducted via internet research and contact/communication with multiple vendors
   Commercial Item: ☑ Yes  ☐ No
   Competitive: ☐ Yes  ☑ No
   If no to one or more above, explain: Reference Attached EC for Sole Source Justifications

8. Sources Considered:
   ☑ FBI Personnel  ☐ Other Government Personnel  ☐ Required Sources (FAR Part 8)
   ☐ 100% Small Bus.  ☐ 8a Set aside  ☐ Disadvantaged (FAR Part 8)
   ☐ Hubzone  ☐ Women-owned  ☑ Other Federal Contracts
   ☐ A-76

9. If Information Technology:
   ☐ IRM Review  ☐ AIS Approval

10. Type of Procurement:
    ☑ Brand Name Only  ☐ Commercial Item  ☐ Functional Specifications
     ☐ Brand Name or Equal  ☐ Compatibility  ☐ Performance-Based Service Contract

11. Contract Type:
    ☑ BOA  ☐ IDIQ Contract  ☐ Reimbursable Agreement
     ☐ Cost-Reimbursement  ☐ (IFB)  ☐ RFP
     ☑ Firm-Fixed Price  ☐ Incentive  ☐ RFQ
     ☐ Firm-Fixed Price w/Economic Adj.  ☐ Letter Contract (DOJ Approval)  ☐ Time and Material

12. Lease vs Purchase (if lease, analysis attached): ☐ No

13. Environmentally Preferable Item:
    ☐ Yes  ☑ No

14. Inherently Government Function (justified): ☑ Yes  ☐ No

15. Lead Time Required: To be filled in by Contracting Officer.

Approval:
   Technical Staff Member/(date)
   Budget Staff Member/(date)
   Legal Review (If applicable)/(date)
   Contracting Officer or CCO/(date)

CELL/OTD  001372
May 04, 2004
EE finished requisition packet
- requisition
- classified EC (Secret)
- Acquisition Plan
- non-Advertisement (Security) Addendum
- non-IT Waiver EC (dated 04/2004)

May 12, 2004
secretary finalized EC

May 24, 2004
packet (EC & Requisition) received approval from AD

May 26, 2004
EC uploaded

June 02, 2004
packet shipped via courier to

June 23, 2004
SSA and EE visited in - met with
and (packet could not be located)

June 24, 2004
met with and he confirmed packet left building on 06/02/2004

June 25, 2004
notified and that unless packet is located by COB that I will need to notify ITD’s Security Officer

approximately 10 minutes after speaking with received first email (from OSSCU Chief

Numerous email communications follow.
ADDENDUM TO SOLE SOURCE JUSTIFICATION FOR REQUISITION

(S)

X

(X)
Precedence: ROUTINE                  Date: 06/19/2003
To: Finance                         Attn:

Criminal Investigative

From: Investigative Technology
Contact: EE

Approved By:

Drafted By:

Case ID #: 268-HQ-1068430
Title: 

Synopsis: To request procurement of

Enclosure(s): FD-369, in the amount of
Non-IT Waiver and Acquisition Plan.

Details:
To: Finance From: Investigative Technology
Re: 268-HQ-1068430, 06/19/2003

LEAD(s):
Set Lead 1: (Action)

FINANCE
AT WASHINGTON, DC

The Engineering Contracts Unit is requested to procure Funding is available on FD-369

Set Lead 2: (Action)

AT WASHINGTON, DC

is requested to approve funding for Funding is available on FD-369

Set Lead 3: (Info)

CRIMINAL INVESTIGATIVE
AT WASHINGTON, DC

For information only.

CC:

◆◆

6

CELL/OTD  001380
TO: Information Resources Manager (IRM)

Date: 06/19/2003

SUBJECT: INFORMATION TECHNOLOGY (IT) MATTER
NON-IT WAIVER REQUEST

The attached requisition number is from the Investigative Technology Division.

Supervisory Special Agent (SSA) is in charge of the Electronics Engineer.

The purpose of the requested equipment is to fill requirements to

The requested equipment is not an FBI

Therefore, a non-IT waiver is being requested to expedite this purchase.
### ACQUISITION PLAN

**FEDERAL BUREAU OF INVESTIGATION**

1. **Unit/Section/Division:** ITD

2. **Description of Requirement:** To request procurement of

3. **Estimated Cost:**

4. **Term of Contract:**

5. **Distribution of Dollars:**
   - FY-03
   - FY-
   - FY-

6. **Subobject Class/Budget Item:**
   - Product or Service Code: n/a

7. **Market Research:** Market survey conducted via internet research and contact/communication with multiple vendors

   - Commercial Item: Yes No
   - Competitive: Yes No

   If no to one or more above, explain: Reference Attached EC for Sole Source Justification

8. **Sources Considered:**
   - FBI Personnel
   - 100% Small Bus.
   - Hubzone
   - A-76
   - Other Government Personnel
   - 8a Set aside
   - Women-owned
   - Required Sources (FAR Part 8)
   - Disadvantaged (FAR Part 8)
   - Other Federal Contracts

9. **If Information Technology:**
   - IRM Review
   - AIS Approval

10. **Type of Procurement:**
    - Brand Name Only
    - Commercial Item
    - Functional Specifications
    - Brand Name or Equal
    - Compatibility
    - Performance-Based Service Contract

11. **Contract Type:**
    - BOA
    - Cost-Reimbursement
    - Firm-Fixed Price
    - IDIQ Contract
    - RFP
    - Incentive
    - Reimbursable Agreement
    - (IFB)
    - RFQ
    - Letter Contract (DOJ Approval)
    - Time and Material

12. **Lease vs Purchase:** No

13. **Environmentally Preferable Item:** Yes No

14. **Inherently Government Function:**
    - Yes No

15. **Lead Time Required:** To be filled in by Contracting Officer.

**Approval:**

- Technical Staff Member/(date)
- Budget Staff Member/(date)
- Contracting Officer or CCO/(date)

- Legal Review (If applicable)/(date)

**CELL/OTD 001382**
(U) Security Addendum to EC dated 04/24/2003, captioned, and requisition dated 04/22/03.

(U) Full and open competition of referenced procurement requirement could it is recommended that no advertisement be made.

April 24, 2003

Security Officer
Investigative Technology Division

Derived From: G-3
Declassify On: X1
FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

To: Finance

Criminal Investigative

From: Investigative Technology

Contact:

Approved By:

Drafted By:

Case ID #: 268-HQ-1068430

Title:

Synopsis: To request procurement of

Enclosures: FD-369, in the amount of Non-IT Waiver, and Acquisition Plan.

Details:
LEAD:

Set Lead 1:  (Action)

FINANCE

AT WASHINGTON, DC

The Engineering Contracts Unit is requested to issue a procurement for.

Funding for this procurement is available from

Budget Items and Subobject Classification

Set Lead 2:  (Action)

AT WASHINGTON, DC

is requested to

approve funding for the procurement for

Funding for this procurement is available from Budget Items Subobject Classification

in the amount of

Set Lead 3:  (Info)

CRIMINAL INVESTIGATIVE

AT WASHINGTON, DC

For information only.

CC:

**

4

CELL/OTD 001388
TO: Information Resources Manager (IRM)

Date: 06/19/2003

SUBJECT: INFORMATION TECHNOLOGY (IT) MATTER
NON-IT WAIVER REQUEST

The attached requisition number is from Investigative Technology Division.

[Supervisory Special Agent] is in charge of the
[Electronics Engineer] is the individual requesting purchase of this equipment.

The purpose of the requested equipment:

The requested equipment is not an FBI

Therefore, a non-IT waiver is being requested to expedite this purchase.
FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE               Date: 07/21/2004

To: Finance

Attn: 

From: Investigative Technology

Contact: EE

Approved By:

Drafted By:

Case ID #: 268-HQ-1068430

Title: 

Synopsis: To request the Engineering Contracts Unit (ECU) to approve funding for

Enclosure(s): Statement of Work, PD-369 in the amount of copy of Non-IT Waiver EC, Acquisition Plan.

Details:

001397
To: Finance  From: Investigative Technology
Re: 268-HQ-1068430, 07/21/2004

LEAD(s):

Set Lead 1: (Action)

FINANCE

AT WASHINGTON, DC

The Engineering Contracts Unit is requested to approve funding in the amount of _______ for the purchase of _______. Funding for this procurement is available from Budget Item _______ Subobject Classification _______.

CC:

◆◆

b3
b6
b7C
b7E
ACQUISITION PLAN

FEDERAL BUREAU OF INVESTIGATION

1. Unit/Section/Division: ITD

2. Description of Requirement: To request

3. Estimated Cost:

4. Term of Contract: 1 Base (FY03) W/4 Options

5. Distribution of Dollars:
   FY-04
   FY-
   FY-

6. Subobject Class/Budget Item:
   Product or Service Code: n/a

7. Market Research (state how performed & attach): N/A

Commercial Item: ☒ Yes ☐ No
Competitive: ☐ Yes ☒ No
If no to one or more above, explain: Reference Attached EC

8. Sources Considered:
   ☐ FBI Personnel
   ☐ Other Government Personnel
   ☐ 100% Small Bus.
   ☐ 8a Set aside
   ☐ Hubzone
   ☐ Women-owned
   ☐ A-76

9. If Information Technology: ☐ IRM Review

10. Type of Procurement:
    ☐ Brand Name Only
    ☐ Commercial Item
    ☐ Compatibility
    ☒ Functional Specifications
    ☐ Performance-Based Service Contract

11. Contract Type:
    ☐ BOA
    ☐ IDIQ Contract
    ☐ Reimbursable Agreement
    ☒ Cost-Reimbursement
    ☐ (IFB)
    ☐ RFP
    ☐ Firm-Fixed Price
    ☐ Incentive
    ☐ RFQ
    ☐ Firm-Fixed Price w/Economic Adj.
    ☐ Letter Contract (DOJ Approval)
    ☐ Time and Material

12. Lease vs Purchase (if lease, analysis attached): ☒ No

13. Environmentally Preferable Item: ☐ Yes ☒ No

14. Inherently Government Function (justified): ☐ Yes ☒ No

15. Lead Time Required: To be filled in by Contracting Officer.

Approval:

Technical Staff Member/(date)

Budget Staff Member/(date)

Legal Review (If applicable)/(date)

Contracting Officer or CCO/(date)
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</table>

Recommend by: Unit Chief
Requested by/Deliver to: Federal Bureau of Investigation

ERF Building 27956A, Quantico, VA 22135
Attn: 

Total

SPECIAL INSTRUCTION:
Ship to Code: 
Delivery Restrictions: 8-5, 8am-4:30pm, except holidays

Previous PO # 

Previous Contract # 

JUSTIFICATION FOR THE PURCHASE OF NONEXPENDABLE ITEM:
See attached EC
STATEMENT OF WORK

Task [ ]

Description

In Task [__] the contractor shall research and evaluate methods that shall [__]
Impact on CommerciAlly Available Services

Impact on Current Capabilities

Demonstration and Product Release
• The contractor shall provide which shall reflect the results of these methodologies, which shall be incorporated into a final release to the customer.

• The contractor shall not provide these features to any other customer unless there exists written approval from both the Contracting Officer (CO) and the Contracting Officer Technical Representative (COTR), or their designees.

Deliverables and Reports
The contractor shall provide the following deliverables and reports:

• DRAFT RESEARCH REPORT: The Contractor shall deliver to the customer a draft research report describing its research and evaluation performed in accordance with subsection titled, Description. If the research indicates that methods described above are not reflective of a realizable solution, the report shall contain the contractor’s recommendations and/or proposed modifications for improvement. The report shall cite reference or describe all data, data sources, methodologies, findings, and determinations used or discovered during the research and evaluation.

• FINAL RESEARCH REPORT: The Contractor shall deliver a final research report that embodies the draft research report and also addresses or incorporates, as appropriate, all comments or questions from the customer that were submitted to the Contractor in response to the draft research report.
The Contractor shall deliver a report which shall encompass the methods and solutions detailed in the Final Research Report.

The draft and final research reports shall be submitted in both hard copy and electronic copy, with electronic versions in MS Word format (or MS Excel if applicable). The reports shall be delivered within specified deadlines.

**Reporting Requirements**

At minimum, the contractor shall provide a status briefing and report to the Contracting Officer (CO) and Contracting Officer Technical Representative (COTR) every 2 months from the start date of the activity. This briefing should contain at a minimum the following:

**Reporting Period Information**
1. A narrative review of work accomplished during the reporting period and significant events/major milestones.
2. Problem areas
3. Anticipated activity for the next reporting period
4. Other relative information as necessary or requested

In addition the contractor shall provide the following:
- The contractor shall inform the CO in writing of the actual task starting date on or before the starting date.
- The contractor shall bring technical issues or potential problems affecting performance to the attention of the COTR as soon as possible. Verbal reports must be followed up with written reports when directed by the COTR.
- The contractor shall notify the CO when 75% of the amount of the task has been expended.
- Additional written reports may be required as deemed necessary by the CO or COTR.
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<th>NATIONAL STOCK</th>
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<th>SUBOBJECT CLASS</th>
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**Recommend by:** Unit Chair
**Requested by/Deliver to:** Federal Bureau of Investigation

**Ship to Code:**

**Delivery Restrictions:** 24-hr, 8am-6pm, except holidays

**Previous PO #**

**Previous Contract #**

**SPECIAL INSTRUCTION:**

**JUSTIFICATION FOR THE PURCHASE OF NONDEPENDBLE ITEM:**

See attached EC

**CELL/OTD 001414**
For Official Use Only

FBI
Portable Electronic Device
Security Management Plan
(SMP) for Legacy

From
Investigative Technology Division

11/12/2004

Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Room 9364
Washington, DC 20530

Prepared By:
Program Manager
Chief Technician
Engineering Research Facility, Building
Quantico, Virginia 22135
1 INTRODUCTION

This document serves as the instrument for the Mobile Computing Security Program to identify requirements and assess risk, with the objective of providing an approval-to-operate (ATO). The information required for this assessment includes, but is not limited to, a complete scope of need, justification, concept of operations, technical specifications, configuration management and residual risk relative to the device being placed into service. Once completed, and if residual risk is deemed acceptable, an official EC will be generated granting an ATO for those device(s) described within, in the manner set forth in the concept of operations. Attachments 1 and 2 are “living” documents. That is they are updated each time there is a change in the configuration, or when new devices are fielded under this SMP. Attachment 1 is the Configuration Management control document that lists the specific applications in use under this SMP. Attachment 2 is a complete listing of all devices fielded under this SMP.

2 MISSION BACKGROUND
5 TECHNICAL DATA

5.1

5.2 Field Control/Storage
5.4 **Technical Specifications**
7 POINTS OF CONTACT

The ISSM has approval authority for the [REDACTED] and is responsible for the life cycle system security. Significant changes in configuration or usage will be submitted to the ISSM by the ISSO for approval.

The ISSO is responsible for day-to-day oversight of the [REDACTED]. He is responsible for engineering, development, configuration management and ensuring that the program security requirements are met. The ISSO also maintains an up-to-date inventory of all [REDACTED] contained within this OP plan and to report any:

- Loss
- Changes in configuration or usage
- Incremental/decremental changes to the baseline to the ISSO and ISSM.

Note: In the event that an ISSM is not assigned, ISSM duties are the responsibility of the assigned security officer.
Configuration management is a process that controls and manages changes (i.e., new applications, peripherals, changes in configuration, etc.) to a device or system. By controlling changes made to a system's hardware, software, firmware, and/or documentation, throughout the system/device life cycle, configuration management is a mandatory, integral part of this overall risk management solution. The ISSM and IS80 are responsible for managing this process.

**8.1 Incremental Changes**

Incremental changes to the baseline may be vetted and approved by the ISSM. Minor changes such as the revision number of an application do not require ISSM approval but are to be tracked by the ISSO in the configuration information periodically provided to the ISSM in the configuration management document illustrated in Attachment 1.

**8.2 Security Architecture and Usage Changes**

Any changes affecting the security architecture including the manner in which the are used or the type of data stored on them may require a renegotiated ATO.

**9 RULES OF BEHAVIOR**

The PEDs known as covered under this SMP are granted deviations from the standard security settings based on operational need. These deviations have corresponding expected rules of behavior with respect to how they are used, stored, and maintained. These include:

**9.1 Protection**

**9.2 Data Protection**
FBI
Portable Electronic Device
Security and Management Plan (SMP)

From
Investigative Technology Division
09/14/2004
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Room 9364
Washington, DC 20530

Prepared By:
Program Manager
Engineering Research Facility, Building
Quantico, Virginia 22135

CELL/TIS
001432

FOR OFFICIAL USE ONLY
1 INTRODUCTION

This document serves as the instrument for the Mobile Computing Security Program to identify requirements and assess risk, with the objective of providing an approval-to-operate. The information required for this assessment includes, but is not limited to, a complete scope of need, justification, concept of operations, technical specifications, configuration management and residual risk relative to the device being placed into service. Once completed, and if residual risk is deemed acceptable, an official EC will be generated granting an approval to operate (ATO) for those device(s) described within, in the manner set forth in the concept of operations. Attachments 1 and 2 are “living” documents. That is they are updated each time there is a change in the configuration, or when new devices are fielded under this ATO. Attachment 1 is the Configuration Management control document that lists the specific applications in use under this ATO. Attachment 2 is a complete listing of all devices fielded under this ATO.

2 MISSION BACKGROUND

3 JUSTIFICATION FOR REQUEST
4 CONCEPT OF OPERATIONS
5 TECHNICAL DATA

5.1

5.2 Field Control/Storage

5.3
10 RULES OF BEHAVIOR

The PEDs known as [ ] covered under this ATO are granted deviations from the standard security settings based on operational need. These deviations have corresponding expected rules of behavior with respect to how they are used, stored, and maintained. These include:

10.1 [ ] Protection

10.2 Data Protection

10.3 [ ]

10.4 [ ]

10.5 [ ]

10.6 PRE/POST Testing and Deployment Procedure
FBI

Portable Electronic Device Security and Management Plan (SMP)

From

Investigative Technology Division

09/14/2004

Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Room 9364
Washington, DC 20530

Prepared By:

Program Manager

FOR OFFICIAL USE ONLY
The PEDs known as covered under this ATO are granted deviations from the standard security settings based on operational need. These deviations have corresponding expected rules of behavior with respect to how they are used, stored, and maintained. These include:

10.1 Protection

10.2 Data Protection

10.3

10.4

10.5
Precedence: ROUTINE
Date: 05/13/2004

To: Finance
Attn: 

From: Investigative Technology
Contact: 

Approved By: 

Drafted By: 

Case ID #: 268-HQ-1068430

Title: 

Synopsis: To request procurement of 

Enclosures: FD-369, #xxxxxx in the amount of copy of Non-IT Waiver EC, and Acquisition Plan.

Details: 

CELL/OTD 001467
To: Finance  From: Investigative Technology
Re: 268-HQ-1068430, 06/13/2003

LEAD:

Set Lead 1: (Action)

FINANCE

AT WASHINGTON, DC

The Engineering Contracts Unit is requested to issue a procurement Funding for this procurement is available from

Budget Items Subobject Classification

CC:

??

3

CELL/OTD 001469
# Acquisition Plan

## Federal Bureau of Investigation

### 1. Unit/Section/Division:

ITD

### 2. Description of Requirement:

To request procurement

### 3. Estimated Cost:

FY-04

### 4. Term of Contract:

- Yes
- No

### 5. Distribution of Dollars:

- FY-04
- FY-
- FY-
- FY-

### 6. Subobject Class/Budget Item:

Product or Service Code: n/a

### 7. Market Research (state how performed & attach):

Market survey conducted via internet research and contact/communication with multiple vendors

### 8. Sources Considered:

- FBI Personnel
- Other Government Personnel
- Required Sources (FAR Part 8)
- 100% Small Bus.
- 8a Set aside
- Disadvantaged (FAR Part 8)
- Hubzone
- Women-owned
- Other Federal Contracts

### 9. If Information Technology:

- IRM Review
- AIS Approval

### 10. Type of Procurement:

- Brand Name Only
- Commercial Item
- Functional Specifications
- Brand Name or Equal
- Compatibility
- Performance-Based Service Contract

### 11. Contract Type:

- BOA
- IDIQ Contract
- Reimbursable Agreement
- Cost-Reimbursement
- (IFB)
- RFP
- Firm-Fixed Price
- Incentive
- RFQ
- Firm-Fixed Price w/Economic Adj.
- Letter Contract (DOJ Approval)
- Time and Material

### 12. Lease vs Purchase (if lease, analysis attached):

- No

### 13. Environmentally Preferable Item:

- Yes
- No


- Yes
- No

### 15. Lead Time Required:

To be filled in by Contracting Officer.

### Approval:

- Technical Staff Member/(date)
- Budget Staff Member/(date)

- Legal Review (If applicable)/(date)
- Contracting Officer or CCO/(date)

### Reference Attached EC for Sole Source Justifications

**PROJECT**

**CELL/OTD**

001470
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**SPECIAL INSTRUCTIONS:**

- Ship to Code: [specify code]
- Delivery Restrictions: M-F, 8am-4:30pm, except holidays
- Government's Estimate: [amount]
- Previous PO #: [number]
- Previous Contract #: [number]

**JUSTIFICATION FOR THE PURCHASE OF NONDEFENDABLE ITEM:**

- See attached EC

**CELL/OTD:** 001471
Supply Technician: 
Program Manager: 
Funding Approved: 
OCTR: 
Room# & Ext: 

National Stock Number: 
Serial #: 
Full Description: 
Unit of Issue: 
Quantity: 
SUbobject Class: 
Unit Price: 
Total: 

Recommend by: Unit Chief: 
Requested by/Deliver to: Federal Bureau of Investigation
ERF Building 27000A Quantico, VA 22135
Attn: 

Special Instruction: 
Ship to Code: 
Delivery Restrictions: 
Federal's Estimate: 
Previous PO #: 
Previous Contract #: 

Justification for the Purchase of Nonexpendable Item: 

See attached EC

Cell/OTD: 001475
To: Finance
Attn: Criminal Investigative

Date: 06/03/2004

From: Investigative Technology
Contact: 

To request the Engineering Contracts Unit (ECU) to establish an

Enclosures: FD-369, in the amount of Statement of Work and Acquisition Plan.

Details: 

Case ID #: 268-HQ-1068430
Title: 

Synopsis: To request the Engineering Contracts Unit (ECU) to establish an
To: Finance  From: Investigative Technology
Re: 268-HQ-1068430, 06/03/2004

LEAD(s):

Set Lead 1: (Action)

FINANCE

AT WASHINGTON, DC

The ECU is requested to establish an ______ Funding in the amount of ______ for the first year is available from Subobject Classification ______ Budget Item ______

Set Lead 2: (Info)

CRIMINAL INVESTIGATIVE

AT WASHINGTON, DC

For information only.

CC: ______

++
JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION IN ACCORDANCE WITH 41 U.S.C. 253(c)(6)

All information contained herein is classified "SECRET" unless so otherwise noted (U).

(1) AGENCY AND CONTRACTING ACTIVITY AND IDENTIFICATION OF DOCUMENT.

(S)

(2) NATURE AND/OR DESCRIPTION OF THE ACTION BEING APPROVED.

(S)

(S)

(3) DESCRIPTION OF THE SUPPLIES OR SERVICES.

(S)
(4) **STATUTORY AUTHORITY.**

(U) This contract action is authorized by 41 U.S.C. 253(c)(6), as implemented in FAR 6.302-6, National Security.

(5) **A DEMONSTRATION THAT THE NATURE OF THE ACQUISITION REQUIRES USE OF THE AUTHORITY CITED.**

(U) As described in FAR 6.302-6(a)(2), use of other than full and open competition is deemed applicable to satisfy the FBI's minimum needs when the disclosure of agency needs would compromise national security.
(6) EFFORTS MADE TO ENSURE OFFERS ARE SOLICITED FROM AS MANY POTENTIAL SOURCES AS PRACTICABLE.

(S)

(S)

(S)

(7) DEMONSTRATION THAT THE ANTICIPATED COST TO THE GOVERNMENT WILL BE FAIR AND REASONABLE.

(U) The contractor's proposal will be subjected to cost/price analysis, audit, and technical evaluation. The Contracting Officer will make a determination, in accordance with FAR 15.404-1, that costs are fair and reasonable.

(8) A DESCRIPTION OF THE MARKET RESEARCH.
A market survey will be conducted to determine that the anticipated cost to the government will be fair and reasonable.

(9) ANY OTHER FACTS SUPPORTING THE USE OF OTHER THAN FULL AND OPEN COMPETITION.

(S)

(10) LISTING OF SOURCES, IF ANY, THAT EXPRESSED A WRITTEN INTEREST IN THE ACQUISITION.

(U) Since the requirement is classified, and therefore not publicized, no other source was given the opportunity to express an interest in writing or orally.

(11) A STATEMENT OF ACTIONS, IF ANY, THE AGENCY MAY TAKE TO REMOVE OR OVERCOME ANY BARRIERS TO COMPETITION.

(S)
(12) CERTIFICATIONS.

TECHNICAL SPECIALIST CERTIFICATION:

(U) As Technical Representative of this requirement, I hereby certify that all information contained herein is complete and accurate to the best of my knowledge.

__________________________  Date
Contracting Officer's Technical Representative (COTR)

CONTRACTING OFFICER CERTIFICATION:

(U) As the Contract Specialist handling this acquisition, I hereby certify that all information contained herein is complete and accurate to the best of my knowledge.

__________________________  Date
Contracting Officer

(U) Reviewed by:

__________________________  Date
Unit Chief
Telecommunications Contracts and Audit Unit

Reviewed by:

__________________________  Date
Chief Contracting Officer

Reviewed by:

__________________________  Date
Office of General Counsel

Approved by:

__________________________  Date
Joseph L. Ford
Deputy Assistant Director

Derived From: G3
Declassify On: X-1
SECRET
JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION
IN ACCORDANCE WITH 41 U.S.C. 253(c)(6)

All information contained herein is classified "SECRET" unless so otherwise noted (U).

(1) AGENCY AND CONTRACTING ACTIVITY AND IDENTIFICATION OF DOCUMENT.

(S)

(2) NATURE AND/OR DESCRIPTION OF THE ACTION BEING APPROVED.

(S)

(S)

(3) DESCRIPTION OF THE SUPPLIES OR SERVICES.

(S)

Derived From: G3
Declassify On: X-1
SECRET
(4) STATUTORY AUTHORITY.

(U) This contract action is authorized by 41 U.S.C. 253(c)(6), as implemented in FAR 6.302-6, National Security.

(5) A DEMONSTRATION THAT THE NATURE OF THE ACQUISITION REQUIRES USE OF THE AUTHORITY CITED.

(U) As described in FAR 6.302-6(a)(2), use of other than full and open competition is deemed applicable to satisfy the FBI's minimum needs when the disclosure of agency needs would compromise national security.
EFFORTS MADE TO ENSURE OFFERS ARE SOLICITED FROM AS MANY POTENTIAL SOURCES AS PRACTICABLE.

DEMONSTRATION THAT THE ANTICIPATED COST TO THE GOVERNMENT WILL BE FAIR AND REASONABLE.

The contractor's proposal will be subjected to cost/price analysis, audit, and technical evaluation. The Contracting Officer will make a determination, in accordance with FAR 15.404-1, that costs are fair and reasonable.

A DESCRIPTION OF THE MARKET RESEARCH.
A market survey will be conducted to determine that the anticipated cost to the government will be fair and reasonable.

(9) ANY OTHER FACTS SUPPORTING THE USE OF OTHER THAN FULL AND OPEN COMPETITION.

(S)

(10) LISTING OF SOURCES, IF ANY, THAT EXPRESSED A WRITTEN INTEREST IN THE ACQUISITION.

(U) Since the requirement is classified, and therefore not publicized, no other source was given the opportunity to express an interest in writing or orally.

(11) A STATEMENT OF ACTIONS, IF ANY, THE AGENCY MAY TAKE TO REMOVE OR OVERCOME ANY BARRIERS TO COMPETITION.

(S)
(12) CERTIFICATIONS.

TECHNICAL SPECIALIST CERTIFICATION:

(U) As Technical Representative of this requirement, I hereby certify that all information contained herein is complete and accurate to the best of my knowledge.

__________________________  __________________
Contracting Officer’s Technical Representative (COTR)  Date

CONTRACTING OFFICER CERTIFICATION:

(U) As the Contract Specialist handling this acquisition, I hereby certify that all information contained herein is complete and accurate to the best of my knowledge.

__________________________  __________________
Contracting Officer  Date

(U) Reviewed by:

__________________________  __________________
Unit Chief  Date

Reviewed by:

__________________________  __________________
Chief Contracting Officer  Date

Reviewed by:

__________________________  __________________
Office of General Counsel  Date

Approved by:

Joseph L. Ford
Deputy Assistant Director

Derived From: G3  Declassify On: X-1
Synopsis: The Finance Division, Engineering Contracts Unit, is requested to modify the Basic Ordering Agreement.

Enclosure(s): FP-369. Number in the amount of and

Details:
To: Finance  From: Laboratory
Re: 269-HQ-1194267, 07/05/2001

LEAD(s):

Set Lead 1: (Adm)

CRIMINAL INVESTIGATIVE
AT WASHINGTON, DC
For information only.

Set Lead 2: (Adm)

FINANCE
AT WASHINGTON, DC
The Finance Division is requested to procure the

Funding totaling to is available for this procurement from Budget Item Spend Code

Set Lead 3: (Adm)

INFORMATION RESOURCES
AT WASHINGTON, DC
For information only.

CC:

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CELL/OTD

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