Audit Report

OFFICE OF THE INSPECTOR GENERAL

PROCUREMENT OF M4 CARBINES

Report No. 97-165 June 17, 1997

Department of Defense

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Acronyms

ACALA	U.S. Army Armament and Chemical Acquisition and Logistics Activity
ARDEC	U.S. Army Armament Research, Development and Engineering Center
Colt's	Colt's Manufacturing Company, Inc.
FAR	Federal Acquisition Regulation
FNMI	Fabrique Nationale Manufacturing, Inc.
NSWC	Naval Surface Warfare Center
TDP	M4A1 Technical Data Package

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
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June 17, 1997

MEMORANDUM FOR ASSISTANT SECRETARY OF THE NAVY (FINANCIAL MANAGEMENT AND COMPTROLLER)
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Audit Report on the Procurement of M4 Carbines (Report No. 97-165)

We are providing this audit report for review and comment. We conducted the audit in response to a congressional request.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. The Commander, Army Tank-automotive and Armaments Command concurred with the recommendations and is taking corrective action. Comments from the Commander, Naval Sea Systems Command were not fully responsive on recommendation B.4; therefore we request the Commander, Naval Sea Systems Command to provide comments on the final report by August 15, 1997.

We appreciate the courtesies extended to the audit staff. Questions on the audit should be directed to Mr. Terry L. McKinney, Audit Program Director, at (703) 604-9288 (DSN 664-9288) or Mr. Bruce A. Burton, Audit Project Manager, at (703) 604-9282 (DSN 664-9282). See Appendix D for the report distribution. The audit team members are listed inside the back cover.

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Office of the Inspector General, DoD

Report No. 97-165 **June 17, 1997**
(Project No. 7CF-5014)

Procurement of M4 Carbines

Executive Summary

Introduction. This audit was requested in October 1996 by the Congressional delegation from Connecticut. The Congressional members were concerned with the Army and Navy's failure to safeguard the Colt's Manufacturing Company, Inc. technical data package. The members also questioned the procurement process for a sole source contract awarded to Colt's Manufacturing Company, Inc. by the Army that was subsequently terminated. The contract, valued at $5.5 million, was for 9,785 M4 carbines and 716 M4A1 carbines. The Company and the Government (represented by the Army) had a license agreement which limited the release of the M4/M4A1 technical data package.

Audit Objectives. Our primary objectives were to determine whether the Colt's Manufacturing Company, Inc. technical data package for the M4A1 carbine was improperly released to Colt's competitors, and if the government violated procurement regulations when it terminated the contract with Colt's Manufacturing Company, Inc.

Audit Results. Both the Army and Navy failed to protect Colt's Manufacturing Company, Inc.'s M4A1 carbine technical data package from improper release. An Army engineer inappropriately released the M4A1 carbine technical data package to the Navy. The Navy originally requested the technical data package for internal use but inappropriately released it to 21 contractors in a solicitation for M4A1 adapter kits. The Army and the Navy took steps to remedy the disclosure, as is provided for in Article XX of the license agreement. We were unable to determine what, if any, effect the disclosure had on the Company's future sales of M4 carbines.

The Army was within its rights to terminate the M4 carbine contract with Colt's Manufacturing Company Inc. However, the Army made numerous administrative and clerical errors during the procurement process of the M4 (Appendix C).

Summary of Recommendations. We recommend that the Army Tank-automotive and Armaments Command establish written procedures for safeguarding and releasing contractor proprietary information, and consider taking administrative action against those persons involved in the improper release of the technical data. In addition, we recommend that the Naval Sea Systems Command return all copies of Colt's technical data package to the Army Tank-automotive and Armaments Command and obtain a non-disclosure agreement from Fabrique Nationale Manufacturing Inc., a contractor. We also recommend that the Navy should consider taking administrative action against any individuals involved in the improper release of data.

Management Comments. The Commander, Army Tank-automotive and Armaments Command concurred with the recommendations. The Army disagreed that there was a violation of the license agreement when the M4 technical data package was released to the Navy; however, the Army agreed with the recommendations to implement written procedures on safeguarding and releasing contractor proprietary data and counselled the person involved in the improper release of the technical data. The Commander, Naval

Sea Systems Command concurred with the recommendations except the recommendation to take administrative action against contracting personnel involved in the improper receipt and release of technical data. The Navy disagreed with our finding that it violated the license agreement. However, the Navy agreed to reemphasize the importance of protecting proprietary data and to return the technical data package to the Army. The Navy also said that Fabrique Nationale Manufacturing, Inc. completed a partial nondisclosure agreement but could not certify to one of the conditions. The Navy stated that there was no evidence indicating that the technical data had been compromised while in the possession of Fabrique Nationale Manufacturing, Inc.

Audit Response. We disagree with the Army regarding the finding, although the Army's comments on the recommendations were responsive. The Army failed to properly instruct the Navy on the terms of the license agreement or that the technical data package was not complete or authorized for competition. The Navy's comments also were only partially responsive. Although the Navy's comments on most of the recommendations were responsive, we believe that accountability should be fixed for any inadvertent disclosure of proprietary information. We request both the Army and Navy reconsider their positions on the finding and provide additional comments to the report by August 15, 1997.

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Part I - Audit Results

Background

This audit was requested in October 1996 by the Congressional delegation from Connecticut.

The delegation stated that the Government had released the Colt's Manufacturing Company, Inc. (Colt's) technical data package for the M4A1 carbine in violation of a license agreement between Colt's and the Army. Additional information on the Congressional inquiry and our conclusions are included in Appendix C.

License Agreement. Colt's and the Government (represented by the Army) entered into a technical data and patent license agreement on June 30, 1967 regarding the M16 rifles and the XM177 submachine guns. The license agreement gave the Government limited rights to the technical data and placed restrictions on its use. The license allowed the Government to release the technical data package (TDP), for the procurement of weapons or spare parts and stated that the weapons were to be manufactured in the United States. The license also stipulated that if the TDP was released for a procurement, all contractors would be required to certify to the use made and disposition of the document in accordance with instructions issued by the responsible contracting officer. The contractors would then be required to adhere to the legend placed on each drawing of the TDP. The TDP included drawings and aperture cards of the whole weapon, major components of the weapon and individual parts of the weapon.

In March 1985, Colt's extended the license to include M4 carbines since this weapon was a derivative of the M16 rifle and the XM177 submachine gun. The M4 carbine has 73 percent of the parts used in the M16A2 rifle. Currently, there are two versions of the carbine available, the M4 and the M4A1. The M4 is capable of firing ammunition in three round bursts while the M4A1 is capable of firing in the fully automatic mode.

Although the TDP for M16 rifles has been provided to contractors for bidding purposes, the TDP for the M4 and M4A1 has not been released for competitive procurements. Purchases of M4 and M4A1 rifles have been made on a sole source basis. Refinement of the M4 TDP has been ongoing and has only recently been finished.

Item Manager. The U.S. Army Armament and Chemical Acquisition and Logistics Activity (ACALA) procures and is the single item manager for the M4/M4A1 carbine. The U.S. Army Armament Research, Development and Engineering Center (ARDEC) is the configuration manager for the M4/M4A1 carbine. ACALA awarded a $5.5 million sole source contract to Colt's on September 18, 1996 for 9,785 M4 and 716 M4A1 rifles. On October 24, 1996 this contract was terminated by the Army after Fabrique Nationale Manufacturing Inc. (FNMI) filed a protest to the General Accounting Office. The protest alleged that ACALA did not provide public notice of a proposed contract action prior to award; thereby leading to an improper contract award. FNMI, a wholly owned subsidiary of Fabrique Nationale Herstal, SA, in

Belgium, is a U.S. Corporation that is incorporated in the state of Delaware and has its place of business in Columbia, South Carolina (see Appendix C for further information).

Audit Objectives

The primary audit objective was to determine if the Colt's technical data for the M4A1 carbine was improperly released to competitors, and whether the Government violated procurement regulations when it terminated a contract with Colt's. We also examined the management control program at each Military Department as it applies to the objectives. See Appendix A for a discussion of the audit scope and methodology and for the results of the review of the management control program.

M4/M4A1 Carbine Technical Data

The Army and Navy failed to protect the confidentiality of the Colt's TDP. Colt's confidentiality was compromised because;

o ACALA and ARDEC did not have written procedures for releasing technical data packages;

o ARDEC further compounded the problem by failing to properly instruct the Navy activity, Naval Surface Warfare Center (NSWC), when it released the data;

o NSWC did not contact the Army before releasing the technical data to contractors and failed to provide contractors with nondisclosure statements, as required by the Defense Federal Acquisition Regulation Supplement and the license agreement, specifying the proper safeguarding and disposition of the proprietary data in the technical data package.

As a result, Colt's competitors obtained access to the company's confidential data, but we were unable to determine what, if any, effect this disclosure may have had on Colt's future M4 carbine business position.

Safeguard and Disclosure of TDP

ARDEC failed to adequately protect the confidentiality of Colt's proprietary data when it provided the TDP to NSWC without ensuring that NSWC was fully aware of the restrictions upon its use in the license agreement, and that the TDP was not complete or authorized for competition for the M4/M4A1. NSWC failed to protect Colt's proprietary data by inappropriately disclosing Colt's TDP to contractors.

Army Handling of TDP. The M16 license, which Colt's extended to the M4/M4A1, allowed the Government to use or disclose the TDP for the procurement of weapons and repair parts and components essential to the normal functioning of the weapon.

Article IV "Technical Data Grant" of Colt's license states:

> Colt's hereby grants to the Government, subject to the terms and conditions of this agreement, a nonexclusive, nontransferable right to use technical data in the *manufacture of weapons and repair parts* therefor (sic) in the United States Territory for military use or to have weapons and repair parts therefor (sic) manufactured for it in the United States Territory for military use. [emphasis added]

The license provision limited the Army's right to transfer or release the TDP. The Navy's request for the TDP may have been outside the scope of the license agreement which authorized release of the TDP strictly for procurement of the M4A1 carbine or repair parts. In the past, Army lawyers had denied the M16 TDP to the Navy for purposes not related to the procurement of the weapon. The Navy requested the TDP to aid in designing M16 storage racks aboard Navy ships. The Army lawyers refused to release the TDP because the request did not meet the requirements of the license.

Written Request. NSWC, the small arms engineering agent for the Navy, stated in its request to ACALA that it required the M4A1 TDP because various components of the carbine and modification kit needed to be checked for compatibility and interchangeability purposes. The modification kit enables various items to be attached to the carbine such as a flashlight or a grenade launcher. The request also stated that NSWC was aware of the fact that the drawings and information were proprietary to Colt's and use was limited to official United States Government business.

ACALA forwarded NSWC's request to the Rock Island Arsenal Repository. Rock Island Arsenal Repository personnel, acting for ACALA, responded by informing NSWC that the TDP was not available at the repository. Personnel at NSWC then telephoned an engineer at ARDEC, also at Rock Island, in November 1995 and requested the TDP. The ARDEC engineer, based on the telephone call and the original written request, authorized release of the TDP in January 1996. The engineer assumed, based on the wording of the request, that the Navy was aware of the existence of the license and its content. The engineer did not inform the Navy that there was a license agreement or that the TDP was incomplete and not ready for competition. NSWC did not know that a license agreement existed. The same engineer released additional M4A1 drawings to NSWC in August 1996 after NSWC discovered it did not have the entire TDP.

Navy Failure to Protect the TDP. NSWC did not safeguard Colt's proprietary data. NSWC officials stated to Army elements that the M4A1 TDP was required to check for compatibility and interoperability of modification kits. However, after NSWC received the TDP for internal use, the Navy without contacting the Army, inappropriately disclosed the M4A1 TDP to 21 contractors in August 1996 in a solicitation for adapter kits. M4A1 adapter kits modify the M4A1 to allow the user to fire special rounds during training exercises. The TDP, in August 1996, was not completed and could not yet be used in competitive procurements. In addition, the purposes for which the TDP was available may not have included use in procurement of adapter kits.

Controls Over Technical Data

Army elements at Rock Island did not maintain sufficient control over Colt's proprietary technical data. The Army elements did not have written procedures

for the control of technical data, and final responsibility for releasing technical data was unclear. In addition, the Army released Colt's proprietary data to NSWC without providing instructions regarding restrictions.

The Navy also did not have adequate controls for protecting the confidentiality of Colt's TDP. NSWC failed to follow the Defense Federal Acquisition Regulation Supplement clauses when handling proprietary data.

Army Controls. Existing Army procedures at Rock Island regarding release of contractor proprietary data were informal and unclear.

Procedures. Since the inception of the M16 license agreement in 1967, the Army had an informal policy of notifying the U.S Army Armament, Munitions, and Chemical Command legal office, the preceding command to ACALA, whenever a request for the TDP was made. The legal office then determined if releasing the TDP was appropriate. However, final responsibility for releasing data conflicted with a legend on the technical data. ACALA legal officials stated that since it had custody of the M4 license, the ACALA legal office should have been consulted prior to the release of restricted data. But restrictions written on the technical data state that the Rock Island Arsenal Repository or "higher authority" decides on how the data is to be disseminated.

Army Instructions to Navy. Even though the Army did not have written procedures, the ARDEC engineer who released the TDP was aware of the informal policy of notifying the ACALA lawyers when a request for the M4/M4A1 TDP is made. He was also aware of the existence of the license, and that access to the data was restricted. The engineer assumed that NSWC was aware of the restrictions because of the wording in the written request. As a result, he did not tell NSWC about the restrictions placed by Colt's on the use of the technical data or that the TDP was incomplete and not ready for competitive release to contractors.

Army personnel at Rock Island need to strengthen controls by establishing written procedures concerning the process of directing requests of technical data, and authority to release technical data. In addition, the Army should consider taking administrative action against those persons involved in providing the technical data to the Navy without complete notification of restrictions on its use.

Navy Controls. NSWC did not consult with ACALA contracting personnel before releasing Colt's proprietary data to contractors. In addition, NSWC officials did not follow requirements of the Defense Federal Acquisition Regulation Supplement, requiring NSWC to provide nondisclosure statements to contractors, prior to disclosing the TDP to contractors including two contractors outside the United States. The Navy needs to reemphasize to NSWC the importance of protecting proprietary data and complying with restrictions on the release of this information, and should consider administrative actions against an individual involved in the inappropriate release of technical data. Although the legend at the bottom of individual drawings is not completely clear, it still provided enough information to alert the Navy to make additional inquiries to the Army regarding the restrictions on use of the data.

Defense Federal Acquisition Regulation Supplement Requirements. NSWC also failed to provide the respondents with nondisclosure statements before releasing the TDP to contractors responding to the M4A1 adapter kit solicitation. NSWC released Colt's TDP to 21 contractors on August 8, 1996 but did not provide nondisclosure statements to the contractors until September 11, 1996. All of the contractors except FNMI signed and returned nondisclosure statements. Defense Federal Acquisition Regulation Supplement 227.7103-7 (a) "Use and nondisclosure agreement" states that the government should not provide technical data to third parties until the intended recipients sign a nondisclosure statement.

Defense Federal Acquisition Regulation Supplement 227.7103-7 (a) "Use and nondisclosure agreement" states:

> ...technical data or computer software delivered to the Government with restrictions on use, modification, reproduction, release, performance, display, or disclosure may not be provided to third parties unless the intended recipient completes and signs the use and non-disclosure agreement at paragraph (c) of this subsection prior to release, or disclosure of the data. [emphasis added]

Colt's notified ACALA on October 17, 1996 that it should not have released the TDP to NSWC, and that NSWC had breached Colt's license by using the TDP in a solicitation for M4A1 adapter kits.

Conclusion

The Army and Navy had inadequate controls to safeguard Colt's proprietary data. As a result, the M4A1 carbine TDP was inappropriately released to contractors for purposes outside the scope of the license agreement. However, we were unable to determine what, if any, effect this disclosure may have on Colt's future M4 carbine business position.

Recommendations, Management Comments, and Audit Response

A. We recommend that the Commander, Army Tank-automotive and Armaments Command:

1. Establish written procedures for Army elements at Rock Island on safeguarding and releasing contractor proprietary information.

2. Consider taking administrative action against the engineer involved in the improper release of the technical data.

Management Comments. The Army concurred with recommendations A.1. and A.2., however, the Army did not concur with portions of the finding and Appendix C. The Army took steps to establish written procedures to safeguard contractor proprietary information and the Army took minimal administrative action against the engineer who released the data. The Army disagreed that there was a violation of the license agreement when the M4 technical data package was released to the Navy. The Army stated that the license grants data rights to the Department of Defense Components and that the Government's rights under the license agreement were not strictly limited to manufacture but also included the right to make improvements and to use the data for any governmental purpose.

Audit Response. We disagree with the Army's comments regarding the finding and Appendix C. We believe the Army contributed to the ultimate compromise of the license agreement. The agreement specifies that the Government as represented by the Department of the Army shall be subject to all restrictions in the agreement. As the representative, the Army agreed by accepting the license terms that the technical data included trade secrets and was proprietary to Colt's. The Army stated that the technical data package was released to the Navy for internal use, however, the Army had already stated that the TDP was incomplete and not ready for competition. The Army failed to exercise due diligence when releasing the data to the Navy without ensuring that the Navy was fully aware of the license agreement and the restrictions placed upon the data especially since the Army knew that the TDP was still incomplete. The Army was further at fault for not informing the Navy that the TDP was incomplete or that the data was not ready for release for competition.

B. We recommend that the Commander, Naval Sea Systems Command:

1. Reemphasize to the Naval Surface Warfare Center the importance of protecting proprietary data and following applicable acquisition regulations.

2. Return all copies of Colt's technical data package to the Army Tank-automotive and Armaments Command.

3. Obtain a signed nondisclosure agreement from Fabrique Nationale Manufacturing Inc.

4. Consider taking administrative action against those contracting personnel involved in the improper receipt and release of the technical data.

Management Comments. The Navy concurred in principle to recommendation B.1. and concurred with recommendations B.2. and B.3. The Navy reemphasized the importance of protecting proprietary data to Naval Surface Warfare Center personnel and will reassess its vulnerability assessment, including its handling of technical data packages, in the next Management Control Program cycle, beginning 1 October 1997 and the Navy has returned the entire M4 technical data package to the Army. In addition, the Navy stated that Fabrique Nationale returned a nondisclosure agreement that certified to 4 of 5 items. Fabrique Nationale could not certify that the technical data package was safeguarded between the time of receipt and notification by the Government

of the proprietary nature of the data. The Navy stated that there was no evidence that indicated that the technical data package was compromised. The Navy did not concur with recommendation B.4. and took exception with our cite of Federal Acquisition Regulation 3.104-8, regarding proprietary information. The Navy stated that the technical data package was not proprietary information as defined by Federal Acquisition Regulation 3.104-4. The Navy also stated that it was allowed to release the technical data package for manufacture of the adapters and could ignore the markings on the drawings because the markings were not strictly in accordance with the Defense Federal Acquisition Regulation Supplement 227.7103-12. The Navy maintained that the technical data package was also releasable because the adapter kits were to be manufactured under a contract with the United States Government.

Audit Response. We partially agree with the Navy's response which incorporates a technical argument about the relevance of FAR Part 3.104 and the application of its procedures to the protection of the data in question, however the fact that the material may not have been proprietary as the term is described in FAR Part 3.104, procurement integrity, does not mean that the data was not "proprietary" for other uses. The license agreement that the Government accepted clearly defined the TDP as proprietary.

We disagree that the Navy's actions were complete regarding FNMI's submission of a partial nondisclosure agreement. The Navy shared the fact that the Defense Federal Acquisition Regulation Supplement required completed non disclosure statements prior to providing data to third parties. In addition, the Navy's statement that there was no evidence that the technical data package was compromised was not sufficient to conclude that FNMI provided a complete nondisclosure agreement. We believe the Navy did violate the license agreement and did not exercise care when it disclosed the data without first contacting the Army to ensure that the release was allowable. The Government agreed to accept the terms of the license agreement which stated that technical data were considered to be trade secrets and proprietary to Colt's. The fact that the Navy was unaware of the license terms and conditions did not release it from these responsibilities. The Navy also violated Article IV and V of the license agreement. The license agreement granted the Government the right to use technical data in the manufacture of weapons and repair parts in the United States Territory. The Navy provided the data to contractors outside of the United States Territory. Article V also restricted use of the technical data to manufacture in the United States. In addition, the Navy did not have the right to ignore restrictive markings on technical data since the Government agreed to accept the license terms that the legends applied by Colt's would not be removed except upon demonstrable proof that such marking was improper with 60 days prior written notice fully specifying the reason for such removal. No written notice was provided either by the Army or the Navy. We are also confused by the Navy belief that the data was not proprietary. The Navy acknowledged, in a letter dated August 29, 1995 requesting the technical data package for internal use, that the Navy was fully aware of the fact that drawings and information were proprietary to Colt's and that the Navy would abide by the limitations of these restrictions. The Navy's release of the technical data

package to 21 contractors including potential competitors and contractors outside the United States failed to protect the proprietary data and violated the license.

We request both the Army and Navy to reassess their comments on the finding and provide additional comments in response to this report. If the Navy changes its position and agrees or partially agrees with the finding, responsibility and accountability should be affixed in some manner. Options include use of the performance appraisal system, as well as administrative personnel actions.

Part II - Additional Information

Appendix A. Scope and Methodology

Scope

Audit Scope. We reviewed Army and Navy procedures used to release the M4 TDP and procurement practices followed for award and termination of Contract DAAE20-96-C-0391 awarded to Colt's. Specifically, we examined Colt's license agreement and the contract awarded to Colt's. We also interviewed Army legal, contracting, and engineering personnel, and Navy procurement and engineering personnel. We reviewed records and documentation dating from 1967 through 1997.

Audit Period, Standards, and Locations. We performed this economy and efficiency audit from November 1996 through January 1997 in accordance with audit standards issued by the Comptroller General of the United States as implemented by the Inspector General, DoD. Accordingly, we included a review of management controls considered necessary. No statistical sampling procedures or computer processed data were used during the audit. We visited or contacted individuals and organizations within DoD. Further details are available upon request.

Management Control Program

DoD Directive 5010.38 "Management Control Program," as revised August 26, 1996, requires DoD organizations to implement a comprehensive system of management controls that provides reasonable assurance that programs are operating as intended, and to evaluate the adequacy of the controls.

Scope of Review of the Management Control Program. We reviewed management control procedures at the ACALA acquisition center and NSWC's procurement center and small arms center. We also reviewed management's self-evaluation of those management controls. We have performed no other audits of the M4 carbine.

Adequacy of Management Controls. We identified material management control weaknesses as defined by DoD Directive 5010.38 at the two audited activities. The ACALA and NSWC management controls for safeguarding and releasing technical data were not adequate to ensure that Colt's technical data was protected. If management implements the recommendation to establish written procedures at Army activities at Rock Island for safeguarding and releasing contractor proprietary information; the Army can better protect contractor confidentiality. If management implements the recommendations to reemphasize the need to follow prescribed acquisition procedures and to return the TDP to the Army, the Navy also can better protect contractor

confidentiality. A copy of the report will be provided to the senior officials in charge of management controls for the Army Tank-automotive and Armaments Command and the Naval Sea Systems Command.

Adequacy of Management's Self Evaluation. NSWC Crane did not perform self evaluations for the procurement center and small arms center because each center reported a low risk in their vulnerability assessment. The ACALA contracting self evaluation did not include tests for safeguarding contractor proprietary information. In addition, the ARDEC component at Rock Island did not conduct evaluations relating to safeguarding contractor proprietary information.

Appendix B. Chronology of Events

June 30, 1967	Colt's Technical Data Sales and Patent License agreement for the M16, M16A1, XM177 and XM177E2 becomes effective.
March 5, 1985	The M4 carbine is included in the above license as an offshoot of the XM177E2.
August 29, 1995	The Navy requests the TDP for the M4A1 carbine in a letter addressed to ACALA.
September 27, 1995	Rock Island Arsenal responds, in a letter to the Navy, that the TDP for the carbine is not available.
November 1995	The Navy contacts ARDEC by telephone requesting the TDP.
January 10, 1996	ARDEC furnishes M4A1 carbine TDP to the Navy.
July 16, 1996	Original Commerce Business Daily synopsis published for procurement of the M4A1 by ARDEC.
August 2, 1996	The Navy issues the solicitation for the M4A1 adapter kits to 21 contractors, including Colt's and FNMI.
August 8, 1996	Amendment 1 is issued along with the portion of the TDP for the M4A1 adapter kits by the Navy.
August 12, 1996	Colt's notifies Navy that it is in violation of the license agreement.
August 13, 1996	Army faxes the Navy information regarding the license agreement.
August 23, 1996	The Navy requests that FNMI return the TDP for the M4A1 carbine.
August 30, 1996	Modification to synopsis published in Commerce Business Daily to add 716 M4A1s. Synopsis incorrectly states the quantity.
September 3, 1996	FNMI requests the solicitation for the M4A1 Carbine from the Army.
September 5, 1996	FNMI submits unsolicited proposal for the M4A1 carbine.

September 6, 1996	The Army modifies the Commerce Business Daily synopsis twice. The first change corrects the quantity but mistakenly states the solicitation is cancelled. The second one changes the issue and opening date.
September 10, 1996	The Army modifies the Commerce Business Daily synopsis to clarify previous synopsis, but makes an error by omitting the word "not" before the word "canceled".
September 18, 1996	The Army notifies FNMI that their unsolicited proposal does not meet requirements. In addition, it awards contract DAAE20-96-C-0391 to Colt's.
September 24, 1996	The Navy notifies FNMI that it failed to sign and return the nondisclosure agreement.
September 27, 1996	FNMI protests to the General Accounting Office the sole source contract award to Colt's.
October 24, 1996	The Army terminates contract DAAE20-96-C-0391 for convenience.
October 28, 1996	Congressional inquiry sent.

Appendix C. Additional Information on Congressional Inquiry

This audit was requested by the Congressional delegation from Connecticut in October 1996 to determine the extent and reasons for the violation of confidentiality concerning Colt's M4 carbine technical data package, and thoroughly review the procurement process for the award of contract DAAE20-96-C-0391. Details related to the specific inquiry items are provided in the following paragraphs.

Extent and Reasons for the Disclosure

The Army compromised the confidentiality of Colt's proprietary data by providing the TDP to NSWC without providing detailed information concerning restrictions upon its use. An engineer at ARDEC released the TDP and additional drawings to NSWC for M4A1 related purposes without legal or higher-level approval.

NSWC compromised the confidentiality of Colt's proprietary data when it subsequently released the TDP to 21 contractors, including two contractors located in Canada, under solicitation N00164-96-R-0117 for M4A1 adapter kits. NSWC did not contact the Army and inquire whether the information could be released to the contractors. Even though the license clearly restricted manufacture of the M4 rifle to companies in United States territories, NSWC released the TDP to two contractors in Canada. Also, NSWC did not follow the Defense Federal Acquisition Regulation Supplement and license requirements for having intended recipients sign nondisclosure statements before releasing the TDP.

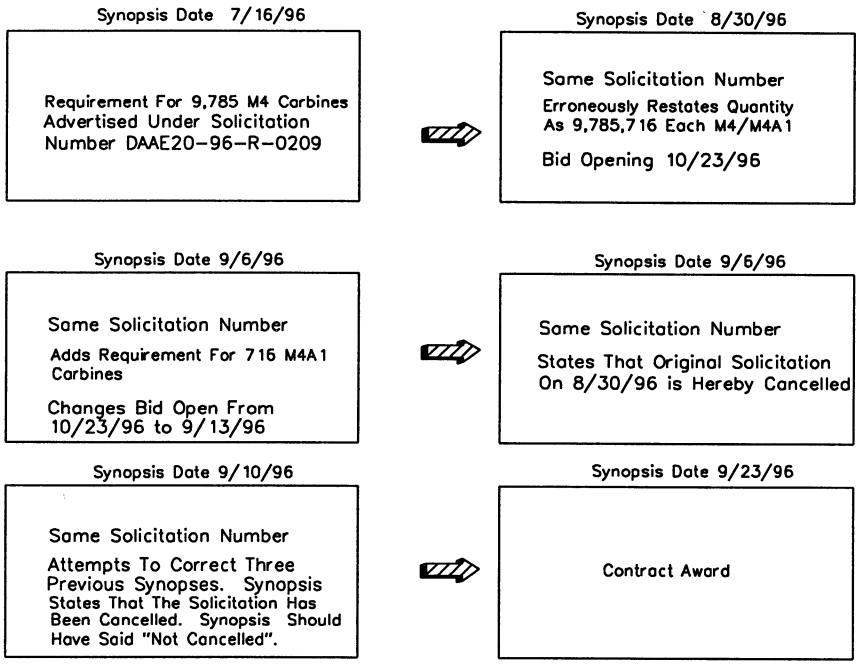
Procurement Process for Contract DAAE20-96-C-0391

Administrative and clerical errors in the synopsis resulted in the Army terminating for convenience contract DAAE20-96-C-0391 awarded to Colt's.

Sole-Source Requirement for M4/M4A1 Carbine. ACALA awarded contract DAAE20-96-C-0391 to Colt's on September 18, 1996. The contract valued at $5,510,617 was for 9,785 M4 and 716 M4A1 rifles. ACALA contracting officials awarded a sole-source contract to Colt's by citing, FAR 6.302-1, one responsible contractor, because the TDP was not complete and certified for competition. ACALA contracting officials also stated that the TDP would be

completed at the end of December 1996 at which time it would be certified for competition. ACALA synopsized the contract in the Commerce Business Daily in accordance with the FAR subpart 5.2.

Clerical Errors. ACALA contracting personnel made errors when preparing the M4/M4A1 synopsis. In an attempt to correct the errors, ACALA prepared six additional synopses for the Commerce Business Daily that were confusing and contained additional errors. On September 27, 1996, FNMI formally protested award of the contract. FNMI contended that the award was improper because ACALA provided no public notice of a proposed contract action prior to award. The following table lists the various synopses and errors published in the Commerce Business Daily.



M4 Synopses Submitted To Commerce Business Daily

ACALA erred by attempting to separate the August 30, 1996 submission from the July 16, 1996 submission even though it had already tied the submission together through revisions to the dates. In addition, ACALA erred by misstating the quantity and cancelling the solicitation. It further erred in attempting to correct the error by stating the solicitation was not cancelled but forgetting to include the word "not."

Based on compounding errors, ACALA contracting personnel consulted with Army Material Command legal officials who determined that ACALA had failed to synopsize the procurement in a manner reasonably expected to provide potential offerors with actual notice of the procurement. ACALA exercised its rights under FAR 52.249-2 and terminated contract DAAE20-96-C-0391 for convenience on October 24, 1996.

Appendix D. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Acquisition and Technology
  Director, Defense Logistics Studies Information Exchange
Under Secretary of Defense (Comptroller)
  Deputy Comptroller (Program/Budget)
  Deputy Chief Financial Officer
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Assistant Secretary of the Army (Financial Management and Comptroller)
Commander, U.S. Army Materiel Command
  Commander, Tank-automotive and Armaments Command
    Commander, U.S. Army Armament and Chemical Acquisition and Logistics Activity
    Commander, U.S. Army Armament Research, Development and Engineering Center
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Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Forces
Senate Committee on Governmental Affairs
House Committee on Appropriations
House Subcommittee on National Security, Committee on Appropriations
House Committee on Government Reform and Oversight
House Subcommittee on National Security, International Affairs, and Criminal Justice, Committee on Government Reform and Oversight
House Committee on National Security

Honorable Rosa L. DeLauro, U.S. House of Representatives
Honorable Sam Gejdenson, U.S. House of Representatives
Honorable Nancy L. Johnson, U.S. House of Representatives
Honorable Barbara B. Kennelly, U.S. House of Representatives
Honorable James Maloney, U.S. House of Representatives
Honorable Christopher Shays, U.S. House of Representatives
Honorable Christopher J. Dodd, U.S. Senate
Honorable Joseph I. Lieberman, U.S. Senate

Part III - Management Comments

Department of the Army Comments

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
RESEARCH DEVELOPMENT AND ACQUISITION
103 ARMY PENTAGON
WASHINGTON DC 20310-0103

REPLY TO
ATTENTION OF

01 MAY 1997

SARD-PC

MEMORANDUM FOR IG, DOD (Auditing), SAAG-PMF-E, Room 1C711

SUBJECT: Audit Report on the Procurement of M4 Carbines (Project No. 7CF-5014)

References:

a. Memorandum, U.S. Army Audit Agency, SAAG-PMF-E, dated March 4, 1997, subject as above.

b. IG, DOD Draft Audit Report on the Procurement of M4 Carbines, February 28, 1997.

c. Memorandum, U.S. Army Materiel Command, dated May 1,1997, subject: DODIG Draft Report, Procurement of M4 Carbines, Project 7CF-5014 (AMC No. D9710).

Since all of the findings and recommendations regarding the Army were related directly to the actions, inaction and the current procurement practices within agencies located at Rock Island Arsenal, reference c (enclosure) has consolidated the comments of the Commander, Army Tank-automotive and Armament Command into an appropriate response.

I concur with the draft written procedures for all elements at Rock Island on safeguarding and releasing contractor proprietary information, as well as the instructional procedures that will ensure that any other DOD third party subject to a release of such information is aware of terms and conditions to satisfy compliance to any agreements related thereto. The execution and dissemination of the final procedures by May 1, 1997 is responsive to the DOD Inspector General recommendation.

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I further concur in the degree of administrative action that was taken against the engineer involved in the release of the technical data.

My point of contact for this action is Mrs. Bunny Greenhouse, 703-697-8506.

Sincerely,

Kenneth J. Oscar
Acting Assistant Secretary of the Army
(Research, Development and Acquisition)

Enclosure

DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY MATERIEL COMMAND
5001 EISENHOWER AVENUE, ALEXANDRIA, VA 22333-0001

REPLY TO ATTENTION OF

AMCIR-A (36-2a)

1 May 1997

MEMORANDUM FOR MR. JOHN BOURGAULT, PROGRAM DIRECTOR, POLICY, FOLLOWUP AND TRAINING, U.S. ARMY AUDIT AGENCY, 3101 PARK CENTER DRIVE, 13TH FLOOR, ALEXANDRIA, VA 22302-1596

SUBJECT: DODIG Draft Report, Procurement of M4 Carbines, Project 7CF-5014 (AMC No. D9710)

1. We are enclosing our position on subject report IAW AR 36-2. We concur with the actions being taken by the U.S. Army Tank-automotive and Armaments Command.

2. Point of contact for this action is Mr. Robert Kurzer, (703) 617-9025, e-mail - bkurzer@hqamc.army.mil.

3. AMC -- America's Arsenal for the Brave.

FOR THE COMMANDER:

Billy K. Solomon

BILLY K. SOLOMON
Major General, USA
Chief of Staff

Encl
as

Enclosure

DEPARTMENT OF THE ARMY
UNITED STATES ARMY TANK-AUTOMOTIVE AND ARMAMENTS COMMAND
WARREN, MICHIGAN 48397-5000

REPLY TO
ATTENTION OF

11 APR 1997

AMSTA-CS-CJ (36-2b)

MEMORANDUM FOR Commander, U.S. Army Materiel Command,
5001 Eisenhoer Avenue, ATTN:AMCIR-A,
Alexandria, VA 22333-0001

SUBJECT: DoDIG Draft Report, Audit on the Procurement of M4 Carbines,
(AMC No. D9710)

1. Reference memorandum, AMCIR-A, HQAMC, dated 6 March 97, SAB.

2. In accordance with AR 36-2, we have reviewed the subject draft report and have attached our Command reply. We disagree with the auditors' conclusion that the Army violated the license agreement that we have with Colt's Manufacturing Company, Inc. by releasing their proprietary data to another Defense Service. We do agree, however, that our policy for the release of proprietary information needs to be formalized. Also, since the engineer which released the proprietary information did not fully comply with our policy, we have reemphasized this policy to him and have provided specific instruction on all of the proper steps. There are no stated monetary benefits.

3. The TACOM point of contact for this reply is Chuck Krulic, (DSN)786-6158.

Laney M Pankey 11 Apr 97

Atch

LANEY M. PANKEY
Colonel, GS
Chief of Staff

COMMAND COMMENTS
DODIG DRAFT REPORT
AUDIT OF PROCUREMENT OF M4 CARBINES
Project No. 7CF-5014

FINDING. The Army and Navy failed to protect the confidentiality of the Colt's technical data package (TDP).

ADDITIONAL FACTS.

A. The license agreement is between the U.S. Government and Colt's; therefore, in every instance where the word "Army" is used in conjunction or in reference to the license agreement, the word "Government" should be substituted.

B. Several legal conclusions involving interpretation of the Government's and Colt's rights and responsibilities under the license agreement were improperly rendered. These will be addressed below.

C. While the Command disagrees with the audit finding that the cognizant Army engineer improperly released the technical data, the responsible supervisor has determined that administrative action is warranted because the engineer failed to comply with the informal policy on the release of technical data.

Specific Comments.

Appendix B: Chronology. Command agrees with the chronology.

Appendix C: The DODIG statement; "Extent and Reasons for the Breach" - "The Army breached the license agreement by releasing the TDP to NSWC for M4A1 adapter kit requirements, outside the scope of the license agreement. An engineer at ARDEC released the TDP and additional drawings to NSWC for M4A1 related purposes without legal or higher-level approval."

Comments: The Army disagrees with the first statement and the legal conclusions therein. The license agreement was not breached by the Army. Any violations of the license agreement by the Navy did not amount to a "breach", as breach is defined in the license agreement. The violations were promptly cured within the timeframe allowed in accordance with the agreement. The Army engineer released the TDP for the Navy's internal usage and not

for the procurement of the M4A1 adapter kit. As noted below, the engineer's actions were within the scope of limited rights authority and the license agreement is irrelevant when the transfer of limited rights data is to another DOD component. Whether the Navy's use of the TDP for its M4A1 adapter kit procurement was outside the scope of the license agreement is an open issue that cannot be determined by this Command. In regard to the second statement, the Army agrees that the engineer did not seek legal review as required by TACOM-ACALA's informal, unwritten procedure. Finally, the engineer's failure to seek higher-level approval is technically correct in light of the 'F' designation; however, this designation is too restrictive and is not consistent with the terms of the license agreement and "limited rights" authority under the Defense Federal Acquisition Regulation (DFAR). TACOM-ARDEC will be changing this 'F' designation.

RECOMMENDATIONS AND ACTION TAKEN

RECOMMENDATION A.1: Establish written procedures for Army elements at Rock Island on safeguarding and releasing contractor proprietary information.

ACTION TAKEN: The Command agrees with this recommendation except that it disagrees with one underlying finding. The Command disagrees with the draft audit statement that the final responsibility for releasing technical data was unclear and that the informal procedure in this regard conflicts with the 'F' designation under DOD Directive 5230.24. The 'F' designation is the most restrictive; in point of fact, this designation is determined by TACOM-ARDEC and was unnecessarily restrictive since it is inconsistent with the terms of the license agreement and the Government's "limited rights" authority. [Note: Designation 'B' would be the most appropriate for the M4 TDP.] Further distribution of a document with an 'F' designation is authorized only as directed by the controlling DOD office (in this case the Rock Island Arsenal (RIA) Technical Data Repository) or higher DOD authority. The RIA Technical Data Repository has a long standing policy to refer requests for Colt's drawings to the cognizant legal office. Thus, pursuant to the informal procedure utilized by TACOM-ACALA and the RIA Technical Data Repository, there is no ambiguity as to who has the final responsibility for advising or approving the release of restricted data. TACOM-ARDEC (R) accepted this policy and complied with it.

There is no legal requirement, under the license agreement or the regulatory scheme, to have a written procedure governing the release of restricted data. TACOM-ACALA/ARDEC's informal

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procedure was a matter of policy. Thus, as a matter of policy, TACOM-ACALA/ARDEC intends to memorialize its informal, unwritten procedure and make any necessary changes or improvements. Additionally, TACOM-ACALA intends to provide the procedure to Colt's Manufacturing, Inc., for its review and comments. If Colt's provides useful changes, these will be incorporated into the procedure.

MILESTONE:	16 April 1997	- complete draft of procedure
MILESTONE:	18 April 1997	- send draft to Colt's
MILESTONE:	29 April 1997	- Colt's comments due
MILESTONE:	01 May 1997	- Final procedure approved and disseminated to cognizant ACALA and ARDEC offices.

RECOMMENDATION A.2: Consider taking administrative action against the engineer involved in the improper release of technical data.

ACTION TAKEN: Command disagrees that there was an improper release of technical data. Nonetheless after considering the facts and circumstances, TACOM-ARDEC (R) agrees that administrative action should be taken. Since the engineer failed to comply with TACOM-ACALA/ARDEC's informal policy, only the most minimal administrative action was warranted. The engineer received a verbal reprimand and personal instruction regarding the handling of future requests for technical data from any source. Following are the relevant facts and extenuating circumstances.

A. The Army engineer acted within the scope of limited rights authority when he authorized release to the Navy for its internal use.

(1) The engineer's actions were permissible under the DFARs limited rights provision. Limited rights are the minimum that can be delivered under a contract absent a DFARs deviation. Under limited rights, the Government has the right to use the data for internal purposes.

(2) The transfer of data to the Navy is permissible for internal usage including internal engineering and modification. The history of the Army's refusal to release Colts' proprietary data for internal use by the Navy or other DOD components was an exercise of extreme caution, but not legally necessary.

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(3) The Army released the data to the Navy for its internal use, not for the Navy's procurement of the M4A1 adapter kit.

B. The Army did not violate the license agreement by virtue of releasing the data to the Navy for the purpose stated by the Navy; i.e., for internal usage.

(1) The license grants data rights to the U.S. Government Department of Defense components which includes the Navy.

(2) The license agreement provides the Government with a bundle of rights greater than the statutory minimum of "limited rights".

(3) The license agreement does not require the Army to screen other DOD components intended use of Colts' proprietary data.

(4) The Government has the right to use "limited rights data" for internal usage or purposes under the DFARs (252.227-7013 formerly ASPR 7-104.9(a) and case law. See, Hamilton Standard, B-167570 (1970); Curtiss Wright Corp., 55 Comp. Gen. 1289 (1976); Garret Corporation, B-182991 (1976); Worthington Pump, B-189023 (1977); and Chevron Chemical Co. v. Castle, 641 F.2d 104 (3rd Cir. 1980).

(5) The Government's rights under the license agreement are not strictly limited to manufacture. The Government has the right to make improvements and to use the data for any governmental purpose so the Army's release of the M4 Carbine data to the Navy for its internal use was within the scope of the license agreement as well as within the scope of limited rights authority.

(6) A nondisclosure agreement is not required of another U.S. Government employee.

(7) The license agreement is not relevant when transferring limited rights data to another DOD component.

C. The Army engineer was not responsible for the Navy's failure to note the proprietary legend on the TDP or the Distribution Statement 'F' on the M4 Carbine drawings.

(1) The drawings in the TDP contain the Colt's legend as specified by the license agreement.

(2) The legend is adequate notice to the Navy and other DOD

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components that certain instructions must be issued by the contracting officer.

(3) The Navy's written request for the M4 Carbine data indicated that it was aware of the restrictions or limitations associated with the data; i.e., that the Government's right to use the TDP was not unlimited.

(4) The age of the license agreement and the litigation on the M16 license agreement, along with the report's finding that Army lawyers refused to release the M16 TDP to the Navy for aid in designing M16 storage racks aboard Navy ships, support the engineer's belief that the Navy was aware of the license agreement and its restrictions.

D. The Army cannot conclusively state that the Navy's use of the M4A1 Carbine TDP was outside the scope of the license agreement. This is a legal conclusion that cannot be categorically determined by the available facts.

The Army as the representative of the U.S. Government and as the custodian of Colt's proprietary data recognizes the importance of safeguarding proprietary data. The cause for the subject investigation was an isolated incident which may be prevented by the promulgation of a written procedure; however, the Army does not have control over how data is used by other DOD components. Consequently, the Army's corrective action will decrease or eliminate the improper release of proprietary data to non-DOD components; however, once the data is released to other DOD components, the Army and the owner of the proprietary data are dependent on their compliance.

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Department of the Navy Comments

DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
RESEARCH, DEVELOPMENT AND ACQUISITION
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

5 May 1997

MEMORANDUM FOR THE DEPARTMENT OF DEFENSE ASSISTANT INSPECTOR GENERAL FOR AUDITING

Subj: DODIG DRAFT REPORT: AUDIT ON THE PROCUREMENT OF M4 CARBINES (PROJECT 7CF-5014)

Ref: (a) DODIG Memorandum of February 28, 1997

Encl: (1) Department of the Navy Comments

We have reviewed the findings and recommendations provided by reference (a). Detailed comments are provided by enclosure(1).

We concur in principle with recommendation B1. We concur with recommendations B.2 and B.3. We do not concur with recommendation B.4. We disagree with the analysis and approach used by the auditors in developing their findings. The report contains inaccurate conclusions based on misinterpretation of acquisition regulations. Further, the report does not address the specific language of Colt's Manufacturing Company, Inc.'s Technical Data Package. It should be noted that a site visit to Naval Surface Warfare Center, Crane was not conducted. The Naval Surface Warfare Center has adequate management controls over technical data but is planning to re-assess their Vulnerability Assessment, including its handling of technical data packages, in the next Management Control Program cycle which begins 1 October 1997.

Richard T. Ginman
Captain, SC, USN
Deputy for Acquisition and
Business Management

Copy to:
NAVINSGEN
ASN (FMC)(FMO 31)
NAVSEASYSCOM (OON3)

NAVY RESPONSE TO
DODIG DRAFT AUDIT REPORT
ON THE PROCUREMENT OF M4 CARBINES
PROJECT NO. 7CF-5014

Overall Comment: We disagree with the analysis and approach used by the auditors in reviewing the facts surrounding the Navy's release of Colt Manufacturing Company's technical data package (TDP). The analysis was incomplete and included misinterpretation of Federal Acquisition Regulations (FAR) which resulted in inaccurate conclusions. Also, the report fails to address the specific language of the TDP.

Comments on Finding: That Navy failed to protect Colt's Manufacturing Company, Inc.'s M4A1 carbine technical data package from improper release.

a. Colt's TDP is not considered to be proprietary for purposes of FAR part 3. While the draft audit report determined that the release of the TDP during the course of the N00164-96-R-0117 constituted release of Colt proprietary data in violation of FAR 3.104-8, it must be noted that "proprietary information", as it is used in FAR 3.104-8, is defined in FAR 3.104-4(j)(1). As defined in FAR 3.104-4, "proprietary information":

> **means information contained in a bid or proposal or otherwise submitted to the Government by a competing contractor in response to the conduct of a particular Federal agency procurement, or in an unsolicited proposal, that has been marked by the competing contractor as proprietary information in accordance with applicable law and regulation.**

b. In the instant case, the "proprietary data" referenced in the report was not received in a bid or proposal. Nor was the TDP received in response to a particular procurement. Rather, the Colt TDP was received as a contract deliverable, subject to a licensing agreement. In addition, the legend on Colt's TDP does not conform to FAR 52.215-12, which sets forth the legend affixed by contractors to proprietary information. Because Colt's TDP is not "proprietary information" as defined by FAR 3.104-4, FAR 3.104-8 does not apply to release of this information.

c. Release was in compliance with Colt's TDP legend.

As required in FAR 27.400, rights in technical data and acquisition of data for the Department of Defense are contained within the DFAR. Colt's TDP legend states:

Enclosure (1)

NOTICE: RESTRICTED AS TO USE AND DISCLOSURE

This entire document and all information, herein is proprietary to Colt's Inc. and shall not be reproduced, duplicated or copied in whole or in part, disclosed or made available to any other person, firm, or corporation or otherwise used except to the extent necessary for and then only in connection with the preparation and/or submission of bids or proposals related to a procurement being effected by the United States Government or in connection with the manufacture in the United States either by the United States Government or under a contract with the United States Government. This document will be disposed of in accordance with instructions issued by the responsible Contracting Officer upon completion of the purpose for which it was issued.

While this language conforms to Colt's license, it fails to indicate a contract reference number or to reference the existence of a license. Further, DFAR 252.227-7013 specifies language, unique to the rights granted the Agency from the contractor, to be used in all legends for TDPs. Specifically, the language to be used when the Government receives rights pursuant to a license is set forth at DFAR 252.227-7013(f)(4)(i). Colt's TDP legend does not conform to any of the authorized markings of DFAR 252.227-7013. If a legend on a TDP does not conform to the required language, DFAR 227.7103-12 allows the Contracting Officer to use the data in accordance with the proper restrictive marking. In an effort to honor the language of the legend, the Contracting Officer issued the TDP in full compliance with all the requirements set forth in Colt's TDP legend. As is apparent by the language of the legend, the Agency was authorized to utilize the TDP in connection with a procurement for the United States. The legend provided no notification that its use was subject to the terms of a contract or a license.

Recommendation B1: Re-emphasize to the Naval Surface Warfare Center the importance of protecting proprietary data and following applicable acquisition regulations.

Management Response B.1: Concur in principle, action completed. The Navy has re-emphasized to the Naval Surface Warfare Center the importance of protecting proprietary data and following applicable acquisition regulations. However, the Navy disagrees with the analysis which precipitated this recommendation.

a. NSWC Crane contracting has adequate management controls over technical data.

(1) While NSWC Crane has re-emphasized use of its already existing processes for protection of proprietary and technical data, the Agency does not concur with the auditor's findings on this issue. Contrary to the auditor's findings, NSWC Crane has multiple management controls over technical data and proprietary data during the contracting process. NSWC Crane's procedures have been designed to minimize risk in the acquisition process and protect the data within its control. For example, proprietary data is protected as proprietary the moment it is received in response to a solicitation. This protection of data lasts through the life of the procurement. Technical data of a contractor is similarly protected. In all procurements which require the contractor to use technical data, including the subject procurement, DFARS 252.227-7025 is included in the solicitation and contract. In the instant case, these procedures would have protected Colt's TDP had the Navy had actual knowledge of the existence of a license through notification by the Army or the existence of a conforming legend on the TDP.

2 Enclosure (1)

(2) The procurement center and the small arms center intends to re-assess their Vulnerability Assessment, including its handling of TDPs, in the next Management Control Program cycle, which begins 1 October 1997.

Recommendation B2: Return all copies of Colts' technical data package to the Army Tank-automotive and Armament Command.

Management Response B.2:. Concur; action completed. All copies of Colt's TDP was returned to the Army Armament and Chemical Acquisition and Logistics Activity (ACALA) per the Army's direction on 27 January 1997, except for a partial TDP which was returned on 19 February 1997.

Recommendation B3: Obtain a signed non-disclosure agreement from Fabrique Nationale Manufacturing Inc.

Management Response B.3:. Concur; action completed. By 25 October 1996, the Government received non-disclosure certificates from all contractors, other than Colt's, who received the TDP, including Fabrique Nationale Manufacturing Inc.'s (FN). On 12 August 1996, NSWC Crane was notified by Colt's that the TDP was subject to a license agreement. Following receipt of a copy of the license agreement from the Army and verification that use of the TDP was improper, on 21 August 1996, NSWC Crane notified all the contractors, excluding Colt's, in receipt of the TDP that they were required to protect the TDP, that directions will be given on disposition of the TDP, and that they will be required to certify to the non-disclosure of the TDP. Except for FN, all of the contacted contractors signed and returned a non-disclosure agreement approved by Colt's. FN agreed to sign a modified non-disclosure agreement containing the following certifications: (a) FN returned the complete TDP to NSWC Crane; (b) FN did not make nor has it retained any copies of the TDP or any portion thereof; (c) FN did not disclose the TDP or any portion thereof to any third party; and (d) FN did not, at any time, use the M4 TDP transmitted under amendment 0001 to RFP N00164-96-R-0117 and since returned to NSWC Crane, for any purpose other than for the purpose for which it was transmitted, namely for the purpose of responding to RFP N00164-96-R-0117. The only difference between the FN non-disclosure agreement and Colt's approved non-disclosure agreement was protection of the TDP prior to the 21 August 1996 notification. Although FN could not certify that the TDP was fully safeguarded between the time of receipt and notification by the Government of the proprietary nature of the data, there is no evidence indicating the TDP was compromised.

Recommendation B4: Consider taking administrative action against those contracting personnel involved in the improper receipt and release of the technical data.

Management Response B.4: Do not concur. Based on the fact that NSWC Crane had no knowledge of the existence of the license and the fact that the Contracting Officer complied with the language of the TDP legend, it is believed that administrative action against contracting personnel is inappropriate. Rather, NSWC Crane has re-emphasized to the contracting and technical personnel that receipt of a TDP or similar data from an outside command must be accompanied by inquiries, when appropriate, as to the source of the data and the rights associated with its use.

In order to standardize this process when data is received from an outside command, NSWC Crane will be incorporating specific guidelines into the Local Acquisition Preparation Guide which instructs the technical customers on preparation of a procurement request.

Audit Team Members

This report was prepared by the Contract Management Directorate, Office of the Assistant Inspector General for Auditing, DoD.

Paul J. Granetto
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Ana M. Myrie