



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Glock, Inc.
File: B-236614
Date: December 26, 1989

DIGEST

1. A protester's allegation that a competitor had special access to "inside" procurement information, based upon an article in a trade journal, does not provide a basis to question a procurement, where the protester produces no concrete evidence to support contentions, even after being given the opportunity to question cognizant agency officials at the General Accounting Office bid protest conference.

2. Agency has established a reasonable basis for its allegedly restrictive specification for a semi-automatic handgun that it be double-action first shot and single-action subsequent shots, where the specification is based upon legitimate safety concerns and where the protester's attack on the specification primarily concerns the agency's training policy in use of handguns, a matter the General Accounting Office will not question under its bid protest function.

DECISION

Glock, Inc. protests the terms of request for proposals (RFP) No. 4756, issued by the Federal Bureau of Investigation (FBI), Department of Justice, for a quantity of 10-millimeter (mm) semi-automatic pistols. Glock argues that the solicitation does not allow sufficient time to prepare proposals and submit samples and is unduly restrictive of competition, and that Smith & Wesson has been given an unfair competitive advantage by the agency's actions.

We deny the protest.

The RFP was issued as a part of the FBI's plan to replace the .38 caliber revolver with a semi-automatic pistol as the standard-issue handgun for its agents. In January, 1988, the FBI awarded a contract for 9-mm semi-automatic pistols. Despite the award of that contract, the FBI determined that there was no semi-automatic pistol currently on the market

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that possessed all of the features and characteristics desired in a standard-issue handgun for its agents.

Early in 1988, the FBI began defining specifications for a new standard-issue handgun. In May, 1988, the FBI conducted a weapons workshop, consisting of representatives of federal, state and local law enforcement agencies, related federal departments and the military, which identified basic specifications desired in the ideal semi-automatic pistol for general law enforcement use. The basic performance specifications of the RFP were derived from the specifications developed by this workshop. The FBI also determined as a result of a wound ballistic seminar and its own ammunition testing that the desired semi-automatic pistols should be of 10-mm caliber.^{1/}

The RFP was issued on June 26, 1989, for the design and supply of a quantity of 10-mm pistols in accordance with stated specifications. Offerors were informed that the closing date for receipt of proposals was July 26 and that six samples of each pistol must be submitted. The closing date was subsequently extended to August 15 at the request of Smith & Wesson.

On July 11, Glock protested to the FBI that the solicitation allowed insufficient time to prepare proposals and submit samples, that the solicitation was overly restrictive and that Smith & Wesson had received confidential information which gave it a competitive advantage. The FBI, on August 4, denied Glock's agency-level protest, and this protest to our Office followed.^{2/}

Glock first argues that the FBI provided Smith & Wesson with "inside" information prior to the issuance of the RFP which

^{1/} The FBI tested the effectiveness of 9-mm, 10-mm and .45 caliber ammunition and determined that the 10-mm cartridge provided the best mix of "stopping power" and accuracy. The agency concluded, however, that the average shooter could not accurately handle the recoil of the full-power, 10-mm ammunition which was commercially available. Accordingly, the agency developed a lower velocity 10-mm cartridge and provided the specifications for this new 10-mm cartridge in the RFP.

^{2/} Smith & Wesson suggests that Glock's protest to our Office may be untimely. The record, however, shows that Glock filed its protest within 10-days of learning of the denial of its agency-level protest. Accordingly, its protest to our Office is timely. 4 C.F.R. § 21.2(a)(3) (1989).

enabled it to design a 10-mm semi-automatic pistol which the FBI then used as the prototype of the pistol sought by the RFP. Glock bases its allegation on a series of articles in a trade journal which allege that the FBI confidentially approached Smith & Wesson in the Fall of 1988 with the results of the agency's ammunition tests and requested that Smith & Wesson design a 10-mm pistol which would become the agency's standard-issue handgun. Glock also alleges that the FBI provided Smith & Wesson with the agency's new, lower velocity 10-mm ammunition to enable Smith & Wesson to design the weapon.

The FBI vehemently denies that it provided Smith & Wesson with "inside" information concerning this procurement or otherwise improperly aided Smith & Wesson. At a bid protest conference conducted at our Office, Glock was permitted to question various members of the FBI's Firearms Training Unit (FTU), who performed the ammunition testing and developed the RFP specifications. While it was clear from this questioning that there had been contacts with various handgun vendors, including Smith & Wesson and Glock, these contacts were a part of the FTU's usual practice of meeting with handgun vendors to stay current with developments in the market. The evidence in the record supports the agency's statements that it did not improperly provide Smith & Wesson with information concerning this procurement.

It is true that Smith & Wesson provided the FBI with a "prototype" 10-mm handgun prior to the issuance of the RFP. However, the record shows this prototype was actually Smith & Wesson's .45 caliber pistol adapted to a 10-mm caliber, which would not have met various RFP specifications, including the requirement that the pistol not contain a manual safety. There is no evidence to support Glock's contention that this handgun became the basis for the RFP specifications. In this regard, as discussed above, these specifications were developed in the 1988 weapons workshop and wound ballistic seminar.

Moreover, Smith & Wesson has submitted affidavits of its Director of Federal Marketing and its Vice-President of Product Engineering who state that they knew in the Fall of 1988 that the FBI was testing 10-mm ammunition and that on the basis of this limited information Smith & Wesson determined that they would adapt their current .45 caliber revolver to a 10-mm caliber. Smith & Wesson has also provided us with evidence that it satisfied its need for 10-mm ammunition with purchases from Federal Cartridge Corp. and Hornady Mfg. Co.

We note that Glock did not provide us with a statement or any other concrete information from the author of the trade journal articles to support its allegations or provide any evidence which showed that Smith & Wesson and the FBI conspired to preselect the Smith & Wesson handgun. We will not find that contracting officials acted improperly based upon unsupported allegations or supposition. Seville Mngt. Corp., B-225845, Mar. 18, 1987, 87-1 CPD ¶ 308. Based on our review of the record, we conclude that the FBI did not provide Smith & Wesson with "inside" information or otherwise treat Smith & Wesson preferentially prior to the issuance of the RFP.

Glock next argues that it is impossible for the protester, or any other offeror, to design, manufacture and test an acceptable 10-mm pistol within the time allowed by the solicitation. The protester specifically contends that it would have needed 6 months to design a pistol in accordance with the RFP.

The FBI responds that the 30-day schedule for submission of proposals, which was later extended by 20-days at Smith & Wesson's request, was necessary to meet the agency's critical need to promptly arm its agents with a handgun which was suited to the current law enforcement environment. The agency argues that response time for submission of proposals was reasonable because handgun vendors were aware as early as February 1989, that the FBI would be purchasing 10-mm semi-automatic pistols and had adequate time to design a 10-mm pistol.

While we are not convinced by the FBI's explanation, we need not decide this issue because, as discussed below, Glock would not have proposed a pistol that satisfied certain reasonable requirements of the RFP. In this regard, Glock objects to the RFP requirement that the first shot trigger pull of the pistol be a smooth, continuous pull of between 10 and 12 pounds and that the trigger pull necessary to fire subsequent shots be a smooth, continuous pull of between 5 and 7 pounds. Glock admits it will not satisfy this requirement with any 10-mm handgun it would offer.^{3/}

^{3/} Glock also protests the requirement that offerors, proposing other than all-steel pistol frame and slide, must provide test results demonstrating the successful firing of 40,000 rounds of ammunition without stress or fatigue failure. We need not address this issue since Glock will not satisfy the double-action/first shot and single-action subsequent shots requirements.

When a protester challenges specifications as unduly restrictive of competition, the procuring agency bears the burden of presenting prima facie support for its position that the restrictions are necessary to meet its actual minimum needs. This requirement reflects the agency's obligation to create specifications that permit full and open competition to the extent consistent with the agency's actual needs. 41 U.S.C. § 253(a)(1)(A). The determination of the government's minimum needs and the best method of accommodating those needs are primarily matters within the contracting agency's discretion. Target Financial Corp., B-228131, Nov. 23, 1987, 87-2 CPD ¶ 506. Consequently, once the agency establishes support for the challenged specifications, the burden shifts to the protester to show that the specifications in dispute are clearly unreasonable. Id.

The agency contends that the purpose of the double-action first shot/single-action subsequent shots requirement is to prevent the inadvertent discharge of the weapon. The FBI states that its agents are trained to keep their finger on the trigger when their handgun is drawn and that the relatively long and heavy trigger pull for the first shot provides a margin of safety to prevent the unintentional firing of the weapon. In this regard, the agency points out that all of its agents received extensive training on .38 caliber revolvers which have a consistently heavy and long trigger pull.

The protester argues that the requirement will not only not satisfy the agency's safety concerns but is itself inherently unsafe. In support of its arguments, Glock has provided us with an affidavit and resume of an independent firearms consultant. Glock's "expert witness" contends that the double-action/single-action nature of the pistol could result in the unintentional discharge of second and subsequent shots and that the heavy and long first trigger pull will result in slower and less accurate first shots. Finally, Glock contends that if the FBI were to train its agents to keep their finger off the trigger until they were ready to shoot, there would be no danger of inadvertent discharge with the continuous double-action design of its pistol. Glock argues that the FBI's finger-on-the-trigger training policy has been "generally discredited by instructors and progressive police agencies alike."

We will find that an agency has established a reasonable basis for its allegedly restrictive specification if its explanation can withstand logical scrutiny. Worldwide Primates, Inc., B-227146, July 7, 1987, 87-2 CPD ¶ 21. The FBI's stated safety concerns clearly meet this test. While

Glock disagrees with the agency's position, it has not demonstrated that the requirement is unreasonable. In this regard, Glock's questioning of the FBI policy of training its agents to keep their finger on the trigger of drawn handguns is not a matter we will question under our bid protest function since it involves how the FBI decides to perform its law enforcement function. See Travenol Laboratories, Inc., B-215739; B-216961, Jan. 29, 1985, 85-1 CPD ¶ 114 (General Accounting Office will not question agency's management of its medical activities).

Since we find that the double-action/single-action solicitation specification is not unduly restrictive of competition, we deny Glock's protest of this requirement. Moreover, inasmuch as Glock informed us during the protest that it would not offer a 10-mm handgun meeting this requirement,^{4/} we conclude that Glock's proposal would not have been technically acceptable or considered for award.

The protest is denied.



James F. Hinchman
General Counsel

^{4/} Glock stated at the bid protest conference that it would not offer a 10-mm pistol which satisfied the RFP requirement that the first shot trigger pull be between 10 and 12 pounds and that subsequent trigger pulls be between 5 and 7 pounds. Glock's semi-automatic pistols have a trigger pull of constant pressure. Subsequent to the filing of conference comments, Glock stated that it was developing a 10-mm pistol which "met the requirements and objectives of RFP 4756, while at the same time avoiding the safety problems with typical double action/first shot pistol technology." However, Glock, by this vague statement has not made it clear that it intends to comply with the RFP requirement in question here, which it has unequivocally rejected.