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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Smith & Wesson, Inc.

File: B-400479

Date: November 20, 2008

John G. Stafford, Esq., Richard L. Moorhouse, Esq., and David Goodwin, Esq., Greenberg Traurig, LLP, for the protester.

John F. Renuzzi, Esq., Renuzzi Law Firm, LLP, for Glock, Inc., the intervenor.

Vera Meza, Esq., and Caridad Ramos, Esq., Department of the Army, for the agency.

Kenneth Kilgour, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of sole-source solicitation is denied where the record shows that the agency complied with statutory requirements by executing a justification and approval authorizing the use of other than full and open competition procedures, based on the agency's reasonable conclusion that there is only one responsible source that will satisfy the agency's requirement.

DECISION

Smith & Wesson, Inc. of Springfield, Massachusetts protests as unreasonable the justification and approval (J&A) offered by the U.S. Army Tank-Automotive and Armaments Command (TACOM) to support the award of a sole-source contract to Glock, Inc. of Smyrna, Georgia under solicitation No. W52H09-08-T-0493 for pistols for delivery to Pakistani security forces.¹

¹ The original protest challenged TACOM's intent to award on a sole-source basis, under the foreign military sales (FMS) program, contracts for the purchase of Glock pistols for security forces in Thailand and Pakistan. The agency stated in its report that it was deleting the Thailand requirement and amending the solicitation to reflect that the pistols for Pakistan were being procured on a sole-source basis not through an FMS but with Department of Defense funds. To that end, the agency submitted with its report the J&A that is the subject of this protest. In light of the agency's action, the protester has requested that we recommend payment of its protest costs related to this issue. Under our Bid Protest Regulations, 4 C.F.R. § 21.8(e) (2008), we may recommend that a protester be reimbursed the costs of filing and pursuing a

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We deny the protest.

This procurement is to supply additional pistols for use by U.S. fighting forces in Pakistan, the Pakistan Army, and the Pakistan Army Special Service Group. The agency states that the Pakistanis use Glock pistols exclusively, the result of earlier direct commercial purchases and follow-on sole-source procurements.² Response to Comments on the AR at 2. The pistols that are the subject of this protest are required for additional scheduled training exercises in early 2009. J&A at 2.

Although the overriding mandate of the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(a)(1)(A) (2000), is for full and open competition in government procurements, obtained through the use of competitive procedures, it permits noncompetitive acquisitions in certain circumstances. 10 U.S.C. § 2304(c). The agency's J&A cites one of the exceptions to the mandate that competitive procedures be used, namely, that there is only one responsible source and no other supplies or services will satisfy the agency's requirements. J&A, citing 10 U.S.C. § 2304(c)(1). The J&A must contain sufficient facts and rationale to support the use of the chosen exception. See 10 U.S.C. § 2304(f)(1)(A), (B); Federal Acquisition Regulation (FAR) §§ 6.302-1(d)(1), 6.303, 6.304; Marconi Dynamics, Inc., B-252318, June 21, 1993, 93-1 CPD ¶ 475 at 5. Our review of the agency's decision to conduct a sole-source procurement focuses on the adequacy of the rationale and conclusions set forth in the J&A. When the J&A sets forth a reasonable justification for the agency's actions, we will not object to the award. Global Solutions Network, Inc.,

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protest where the contracting agency decides to take corrective action in response to the protest. We will make such a recommendation, however, only where the agency unduly delayed taking corrective action in the face of a clearly meritorious protest. CSL Birmingham Assocs; IRS Partners-Birmingham--Costs, B-251931.4; B-251931.5, Aug. 29, 1994, 94-2 CPD ¶ 82 at 3. A protester is not entitled to protest costs where, under the facts and circumstances of a given case, the agency has taken reasonably prompt corrective action. DuraMed Enters., Inc.--Costs, B-271793.2, Oct. 4, 1996, 96-2 CPD ¶ 135 at 2. Here, even if TACOM's actions are regarded as corrective action in response to the protest, we do not consider them to be "unduly delayed" because they were taken by the due date for the agency report; this is so even where, as here, the due date for the agency report was extended. TRS Research and Transp. Planning and Servs., Inc.--Costs, B-290122.2, July 25, 2002, 2002 CPD ¶ 126 at 2.

² The protester disputes the agency's claim that the Glock is the only pistol currently in use by the fighting forces in Pakistan; Smith & Wesson asserts that Pakistani war fighters also use one of its own pistols, as well as a Beretta firearm. We need not resolve this issue, because the protester does not dispute that the fighting forces use the Glock as their primary weapon and, for the reasons discussed below, we find the agency's rationale in support of this weapon standardization reasonable.

B-290107, June 11, 2002, 2002 CPD ¶ 98 at 6; Diversified Tech. and Servs. of Virginia, Inc., B-282497, July 19, 1999, 99-2 CPD ¶ 16 at 3.

We conclude that the rationale advanced by the agency in the J&A—in essence, the critical benefits from weapon standardization—is sufficient to support the decision to procure the Glock pistol on a sole-source basis. Specifically, the agency asserts that prior wide use of the Glock pistol by the fighting forces mentioned above has created “a baseline of standardization of operations and support that is critical to be continued.” J&A at 1. Procuring more of the same pistol would lessen the logistical burden on the Pakistan Army, the agency states, in part by reducing the effort required for spare parts administration; retraining the various forces also would be unnecessary if the same pistol were procured.

In its challenge to the agency’s rationale, the protester points out that the J&A does not support a conclusion that the Pakistanis cannot effectively defend themselves if they procure a pistol other than the Glock that they use now. The protester also maintains that the disassembly and cleaning of the Glock and the proposed Smith & Wesson firearms are identical; that, given its worldwide popularity, there is no shortage of spare parts for the protester’s pistol; and that personnel are typically trained to service and repair or replace the parts for many different types of semi-automatic weapons. The protester also asserts that the difference between the trigger pulls of the two weapons—the protester’s pistol has a heavier trigger pull and a longer trigger travel—are at best minor distinctions that would have no impact on the war fighting capabilities of the Pakistani forces.

As an initial matter, to the extent that the protester argues that the J&A is inadequate because it does not show that the Glock pistol is indispensable to the forces who would use it, its argument is based on a flawed premise. As discussed above, the standard is not whether the item being procured is indispensable, or even whether the Glock performs better than the selected pistol, but whether the agency has offered sufficient facts and rationale to support the decision to procure it on a sole-source basis. The protester’s claim that many organizations with armed personnel train them on several different firearms is unpersuasive; what is at issue here is the level of training received by the Pakistani fighting forces and not, as in one example offered by the protester, the training regimen of metropolitan cities in this country. There is nothing in the record to suggest that the forces that would be supplied with a different pistol than the current Glock would easily adapt to a change in firearms.

It is undisputed that the parties using these weapons do so under extremely hazardous and unstable conditions. Under these circumstances, we conclude that the benefits to the fighting forces cited in the J&A from procuring the same pistol currently in use, such as avoiding the need for retraining on a different model or the

need to stockpile spare parts for different models, are sufficient to support the agency's decision to procure the pistols on a sole-source basis.

The protest is denied.

Gary L. Kepplinger
General Counsel