



RENZULLI LAW FIRM, LLP

81 MAIN STREET, SUITE 508

WHITE PLAINS, NY 10601

TEL (914) 285-0700

FAX (914) 285-1213

www.renzullilaw.com

IN NEW YORK CITY

300 EAST 42ND STREET
NEW YORK, NY 10017

TEL (212) 599-5533

FAX (212) 599-6385

February 24, 2017

VIA E-MAIL (protests@gao.gov)

Office of the General Counsel
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Attention: Procurement Law Control Group

**Re: Protest of Glock, Inc. of Army Contracting Command – NJ
Solicitation No. W15QKN-15-R-0002**

POST-AWARD PROTEST AND REQUEST FOR PROTECTIVE ORDER

Dear Sir or Madam:

Glock, Inc. (“Glock”), 6000 Highlands Parkway, Smyrna, Georgia, 30082, telephone: (770) 432-1202, facsimile: (770) 433-8719, through its undersigned counsel, hereby protests the Army Contracting Command – NJ’s (“Army”) award to Sig Sauer, Inc. (“Sig Sauer”) for the production and delivery of the XM 17 Modular Handgun System (“MHS”). The Army, Building 10 Phipps Road, Picatinny Arsenal, New Jersey, 07806-5000, issued Solicitation No. W15QKN-15-R-0002 (the “Solicitation”) on August 28, 2015, and over the course of the next two years, issued seven amendments thereto (two of which were identical) (collectively, the Solicitation and all of the amendments are referred to herein as the “Solicitation”).¹

¹ A copy of the Solicitation and the seven amendments thereto is attached hereto as Exhibit A.

The Solicitation is for the acquisition of handguns, accessories, and ammunition. The total value of the firm fixed price, indefinite delivery/indefinite quantity contract to be awarded was not to exceed \$580,217,000. On September 16, 2016, Glock was informed that its 9mm MHS proposal had been included in the competitive range. On January 19, 2017, Glock was informed that its 9mm MHS proposal had not been chosen for an award and that a single award had been made to Sig Sauer. Glock timely requested a post-award required debriefing, which was held on February 17, 2017.

This protest is timely pursuant to 4 C.F.R. § 21.2(a)(2) because it has been filed within ten (10) days of the “date on which the debriefing [was] held,” which was February 17, 2017. Glock is an interested party pursuant to 4 C.F.R. § 21.0(a)(1) because it has a direct economic interest that would be affected by the award of a contract or by the failure to award a contract. Specifically, Glock has a direct economic interest that is affected because: (1) it is an actual bidder and, in fact, was only one of two bidders included within the competitive range prior to the award; (2) the Army did not issue an award to Glock and, thereby, did not complete the two-phase testing and down-selection evaluation required by the Solicitation; (3) the Army’s conclusions that resulted in Glock being excluded from the second phase of the two-phase qualification and evaluation testing required by the Solicitation were unreasonable, arbitrary and capricious, and/or inconsistent with the Solicitation criteria and applicable procurement statutes and regulations; (4) the Army improperly evaluated Glock’s proposal against the Solicitation, including, but not limited to, Glock’s proposed pricing; (5) the Army failed to follow or deviated from the stated evaluation criteria; (6) the Army’s conclusions were not reasonably based; and (7) the Army engaged in disparate treatment by, among other things, failing to treat offerors equally and evaluate proposals evenhandedly against the Solicitation’s requirements and evaluation criteria.

A complete copy of the protest with all attachments is being simultaneously served on the contracting officers:

Mr. Kevin Puma
Army Contracting Command - Picatinny
ACC-NJ-SW
Bldg. 9 Phipps Rd.
Mail Stop: Bldg. 10
Picatinny, NJ 07806-5000
Phone: (973)724-6612
E-mail: kevin.p.puma.civ@mail.mil

Mr. Vincent Turco
Army Contracting Command - Picatinny
ACC-NJ-SW
Bldg. 9 Phipps Rd.
Mail Stop: Bldg. 10
Picatinny, NJ 07806-5000
Phone: (973)724-2016
E-mail: vincent.f.turco.civ@mail.mil

A. GROUND

1. The Army Acted Unreasonably, Failed to Follow or Deviated from the Stated Evaluation Criteria in the Solicitation, Engaged in Disparate Treatment and Materially Altered the Solicitation by Not Conducting the Product Verification Test / Down Select Evaluation Required by Section H of the Solicitation

The Solicitation set forth a two-phase qualification and evaluation process. The first phase was the Bid Sample Test (“BST”) conducted pursuant to Section M of the Solicitation, which was designed to provide an initial evaluation of the offerors’ pistols, accessories, and ammunition and rate the proposals. At the end of the BST phase, the Solicitation required the Army to select up to three proposals within the competitive range to complete the Production Verification Test / Down Select Evaluation (“PVT / DSE”), which involves substantially more in-depth and complete testing. Based on the results of the BST testing, the only two MHS proposals that were within the competitive range and qualified to proceed to the PVT / DSE testing were the Sig P320 and the Glock 9mm.

The Solicitation does not allow the Army to eliminate Glock’s 9mm proposal without completing the full-scope of the required testing, *i.e.*, without completing the PVT / DSE testing, the second phase of the two-phase qualification testing and evaluation based on different and more stringent criteria. Section H of the Solicitation requires the Army to make initial awards to both

the Sig P320 and the Glock 9mm because they were the only two proposals within the competitive range at the end of the BST testing. When there is more than one proposal in the competitive range, the Army is not permitted to “down select” to a single awardee until the completion of the PVT / DSE phase, as expressly set forth in Section H of the Solicitation.

The Executive Summary of the Solicitation explicitly states that the Army:

intends to award up to three (3) Firm Fixed Price (FFP), Indefinite Delivery/Indefinite Quantity (IDIQ) contracts based on the results of the initial evaluation of the proposal submission by following the evaluation procedure contained in section M of this RFP. The Government will then make a final down-selection to a single contractor by following the evaluation procedures contained in section H of this RFP. The period of performance of the base contract(s) will be ten (10) years for the handgun, accessories and spares and five (5) years for the ammunition.

Each contract that is awarded will be issued a delivery order in the base year to meet the minimum guarantee for the contract. The minimum contract guarantee will consist of the weapon system component package (CLIN² 0001), as described in the statement of work. The weapon system component package items, which will be due 60 days from receipt of order will be used as part of the down-select evaluation as described in section H of this RFP. The Contractors not selected to provide production units, as a result of the downselect evaluation will have their contracts considered complete with no further obligation required by the Government.

Solicitation, Executive Summary (page 2) (emphasis added). Similarly, Section H.3.1 of the Solicitation, titled “Down Select Evaluation,” expressly provides for an evaluation and down-selection of multiple contractors to a single awardee after completion of the PVT / DSE phase, stating that:

Subsequent to award of the base contract(s), the first delivery order will be issued for the Weapon System Component Package requirements in accordance with CLIN 1001³ of the base contract and Statement of Work C.3.1 which will satisfy

² “CLIN” refers to contract line item number.

³ Although Section H.3.1 of the Solicitation refers to CLIN 1001, the actual CLIN embedded in Section B of the Solicitation is 0001.

the minimum guarantee of each of the contracts. The deliverables from this first order will be used for the evaluation and down-selection to a single Modular Handgun System (MHS) contractor to continue into production.

Solicitation, Section H.3.1 (emphasis added). Moreover, Section H.4.1 of the Solicitation, titled “Basis for Down-Selection Decision,” provides that upon completion of the mandatory PVT / DSE the:

Government will down-select to the Contractor whose proposals represent the best value to the Government using the trade-off method, with the Source Selection Authority (SSA) giving the appropriate consideration to the six (6) evaluation factors: System Accuracy Shooter In The Loop, Reliability and Service Life, License Rights (LR) Ammunition, License Rights (LR) Handgun and Accessories, Other Characteristics, and Price. The Government will weigh the relative benefits of each proposal and award will be made based on an integrated assessment of the results of the evaluation. In making the integrated assessment of the evaluation results, the SSA will give due consideration to all of the Factors and Sub-Factors and their relative order of importance.

(Solicitation, Section H.4.1 (emphasis added)). Nowhere in the Solicitation is the Army authorized to choose only one of the proposals in the competitive range based on the results of the BST testing to receive an award and forego conducting the PVT / DSE testing and rating the proposals based on the six specified factors.

During the February 17, 2017 debriefing, the Army advised Glock that it first decided to make only a single award — without first conducting the required PVT / DSE testing — on January 17, 2017, only two days before announcing a single award to Sig Sauer. This last minute decision to substantially deviate from the requirements of the Solicitation strongly indicates that the Army’s decision was influenced by political pressure based on the amount of time and money that it had already spent on the MHS Solicitation. By awarding the contract to the Sig P320 after the conclusion of the BST testing pursuant to Section M of the Solicitation, the Army failed to conduct the required PVT / DSE testing and rate the proposals based on the six evaluation factors in the Section H of the Solicitation to determine which proposal represented the best value to the

Government. By doing so, the Army: (1) deviated from the express criteria set forth in the Solicitation; (2) disparately treated Glock versus Sig Sauer; and (3) materially altered the Solicitation in violation of applicable law and regulations, *e.g.*, without providing notice to offerors or issuing an amendment.

Not only did the Army fail to follow the criteria set forth in the Solicitation, during the required debriefing held on February 17, 2017, the Army indicated that while it will conduct PVT testing on the Sig P320, it will not necessarily conduct the specific PVT / DSE testing required by Section H of the Solicitation, and that it will not even evaluate the Sig P320's performance. Potentially conducting different PVT / DSE testing than required by Section H, and failing to evaluate the Sig P320 is also a material alteration of the Solicitation in violation of applicable regulations and law.

The Army's actions are not only prejudicial to Glock (and detrimental to the United States' warfighters who deserve the best MHS pistol), but they are wholly inconsistent with the entirety of the procurement process. The Army has unjustifiably introduced an unbound risk during the PVT / DSE phase by making an initial award to only a single awardee. If the Sig P320, the single awardee, does not meet all of the threshold requirements of the PVT / DSE testing pursuant to Section H of the Solicitation (to the extent the Army even conducts the specific PVT testing required), the Army could be incurring additional costs (not captured in the total evaluated price) by mandating needed engineering change proposals. This would further delay the MHS program, leaving our warfighters without the best material solution for their pistol requirements and potentially requiring the Army to begin a new solicitation process.

If the Army had also made an initial award to the Glock 9mm (the only other proposal within the qualified range) as required by the Solicitation, it could have down-selected at the end

of the PVT / DSE testing as intended and made a final award to the Glock 9mm if it met the threshold requirements and the Sig P320 did not. By deviating from the requirements of the Solicitation and making an award to only one of two qualified proposals, simply because of the difference in price, the Army has left itself with no recourse to recover from any failure(s) to meet any threshold requirement – a result that not only leaves the Army with an unsuccessful procurement, but its warfighters without recourse and, potentially, without new pistols.

2. The Army Acted Unreasonably, Failed to Follow or Deviated from the Stated Evaluation Criteria in the Solicitation and Engaged in Disparate Treatment by Not Rating the Results of Factor 2 – Bid Sample Test Other, Subfactor 2 – Initial Reliability Compact Function (or single Gun Candidate)

Glock's 9mm was submitted as a one-gun solution, but the Sig P320 was submitted as a two gun (full size and compact) solution. Reliability testing was conducted on the one-gun solution / full size pistols pursuant to Factor 1 – Bid Sample Test Technical, Subfactor 2 – Bid Sample Test Other during which 12,500 rounds were fired through five handguns. Glock's 9mm proposal was rated as Blue/Outstanding for this subfactor. Factor 2 – Bid Sample Test Other, Subfactor 2 - Initial Reliability Compact Function (or single Gun Candidate) was designed to test the reliability of the compact pistol by firing 500 rounds through three pistols. For a one-gun solution, such as Glock's 9mm, an additional three pistols were tested. After the testing was conducted, the Army decided that the results of the compact reliability testing would not be rated because:

the sample size of 500 rounds for the "Sub-Factor 2 - Initial Reliability Compact Function (or single Gun Candidate)" is an insufficient number of rounds to evaluate against the AR-PD-177 reliability requirements (3.7.1.a). Using 3 weapons, 500 rounds each weapon - for a total of 1500 rounds, the highest MRBS that can be calculated is 651. Based on the limited number of rounds fired (i.e. 1500), compliance with the MRBS reliability requirement (i.e. 2000 – Threshold) could not be evaluated. There is no distribution or point estimate calculation that will yield 2000 MRBS at 90% Confidence. As a result, we do not have the needed data to evaluate the sub-factor.

Phase I Final Evaluation Source Selection Report Glock 9mm (Glock 9mm Evaluation Report)
Section 5.2.6.2.⁴ Importantly, unlike for the full size MHS, there is nothing in the Solicitation requiring the ability to achieve 90% confidence for the initial reliability rating for the compact MHS, the sole reason the Army gave for failing to rate the results. *Compare* Solicitation Section M.3.2.2.1 with Section M.3.2.3.2. In addition, although the Source Selection Decision Document (“SSDD”)⁵ claims that the “compact variant makes up an incredibly small portion of the overall award,” (SSDD at page 15), the pricing worksheet for a two-gun solution provided for up to 550,000 full size MHS pistols and up to 150,000 compact MHS pistols.⁶ This means that the compact MHS pistols can account for more than twenty-one percent (21%) of the overall award, which is certainly not “incredibly small.”

By failing to rate the results of the Initial Reliability Compact Function (or single Gun Candidate) subfactor, the Army deviated from the standards set forth in the Solicitation. This deviation prejudiced Glock because it had submitted its 9mm proposal as a one-gun solution and it had already been rated as Blue/Outstanding for reliability based on the Initial Reliability – Full Size subfactor. In addition, during the February 17, 2017 debriefing, the Army advised that the Glock 9mm did not have any stoppages during the Initial Reliability Compact Function (or single Gun Candidate) testing. Glock’s 9mm proposal therefore should have also been rated as Blue/Outstanding for the Initial Reliability Compact Function (or single Gun Candidate) subfactor.

⁴ A copy of the Glock 9mm Evaluation Report is attached hereto as Exhibit B.

⁵ A copy of the unsigned, undated, redacted SSDD that was received during the February 17, 2017 debriefing is attached hereto as Exhibit C.

⁶ Copies of the pricing worksheets for a one-gun solution and for a two-gun solution are attached hereto as Exhibit D.

In addition, the Army deviated from the Solicitation by making an award to Sig Sauer for the P320 without even determining whether it met the initial reliability requirements for its compact MHS pistol.

3. The Army Failed to Follow or Deviated from the Stated Criteria in the Solicitation by Assigning Extra Weight to the Manual Safety in Both Factor 1 – Bid Sample Test Technical, Subfactor 4 – Joint Warfighter Ergonomics, and Factor 2 - Bid Sample Test Other, Subfactor 1 - Early Warfighter Acceptance in Section M of the Solicitation

Section M of the Solicitation states that the manual safety of the pistols is to be evaluated pursuant to both Factor 1 – Bid Sample Test Technical, Subfactor 4 – Joint Warfighter Ergonomics, and Factor 2 - Bid Sample Test Other, Subfactor 1 - Early Warfighter Acceptance. With regard to the Joint Warfighter Ergonomics subfactor, the participants tested the pistols to verify that they were “able, upon properly gripping the handgun with a one-hand grip . . . to operate the slide release, safety, magazine release, decocker (as applicable) and trigger (complete Double Action and Single Action squeeze, as applicable).” Solicitation Section M.3.2.2.4 (page 342). The Early Warfighter Acceptance subfactor was designed to evaluate “[c]omfort in Grip, Controllability and Recoil, Trigger, Ease/Speed of Magazine Changes, Sight-ability, and Use-ability of Controls.” *Id.* Section M.3.2.3.1 (page 342).

The only weakness identified with Glock’s proposal with regard to the Joint Warfighter Ergonomics subfactor related to the manual safety. Nothing in Section M.3.2.2.4 of the Solicitation states that the safety is of any greater importance than the other weapon system controls. The Army deviated from the criteria listed in the Solicitation by considering the safety to have “significance” among “all weapon system controls” and therefore assigning more weight to the safety than to the other weapon controls, including the slide release, magazine release, decocker (as applicable) and trigger. As set forth in the Glock 9mm Evaluation Report, the Army deviated

from the Solicitation and assigned more weight to the safety because the:

SSEB considered the interaction between the number of participants who provided responses and the safety selector in particular, among all weapon system controls, as reflecting particular importance given the operational implications of the safety selector as a contributor to accidental or negligent discharge of the firearm.

Glock 9mm Evaluation Report Section 5.1 (page 37).

Based on the Army's deviation from the Solicitation by assigning extra weight to the safety, the only weakness identified in Glock's 9mm proposal, it was improperly rated as only Green/Acceptable for this subfactor. In addition, this was the only subfactor in Factor 1 where the Glock 9mm was rated differently than the Sig P320, which was rated as Purple/Good for that subfactor. However, the deviation from the Solicitation with regard to the weight placed on the safety in this subfactor resulted in Glock's 9mm proposal being rated overall as only Green/Acceptable for Factor 1, while the Sig P320 was rated as Purple/Good for Factor 1.

The participants evaluating the pistols pursuant to the Early Warfighter Acceptance subfactor completed the Warfighter Evaluation Questionnaire attached as Appendix J to the Solicitation, which contained eight questions, only one of which related to the safety (Question 1: "Please explain the implication(s) of the design of the controls with regard to how it affects the use of this weapon system.").⁷ Nothing in Section M.3.2.3.1 of the Solicitation states that the safety is of any greater importance than the other weapon system controls being evaluated and, in Section A of Amendment 1 to the Solicitation (effective October 8, 2015), the Government Response to Question 5 specifically stated that "[a]ll questions and responses regarding the Warfighter questionnaire are weighted/evaluated equally."

⁷ A copy of the Appendix J Warfighter Evaluation Questionnaire is attached hereto as Exhibit E.

The Army also deviated from the Solicitation by assigning more weight to the safety with regard to the Early Warfighter Acceptance subfactor because the:

SSEB considered the interaction between the number of participants who provided responses and the safety selector in particular, among all weapon system controls, as reflecting particular importance given the operational implications of the safety selector as a contributor to accidental or negligent discharge of the firearm.

Glock 9mm Evaluation Report Section 5.2.6.1 (page 39).

Accordingly, the Army deviated from the Solicitation by assigning more weight than intended to the manual safety with regard to the evaluation of the Glock 9mm in both the Joint Warfighter Ergonomics and Early Warfighter Acceptance subfactors.

4. The Army Failed to Follow or Deviated from the Stated Criteria in the Solicitation by Not Properly Evaluating Glock's Proposed Pricing

Section M.3.2.8 of the Solicitation sets forth the criteria for calculating the total evaluated price ("TEP") for the proposals. The Army stated that the "[p]rices proposed [by the offerors] were used to compute a total evaluated price" and, subsequently, a "price reasonableness determination was made on the total evaluated price which was used in the performance of a tradeoff analysis." Glock 9mm Evaluation Report at page 20. The Army calculated Glock's total evaluated price to be \$272,232,563. Glock 9mm Evaluation Report at page 63. However, neither the Solicitation nor the Glock 9mm Evaluation Report specifies all of the calculations applied by the Army or all of the necessary specific criteria used to derive the TEP (*e.g.*, the Army has not indicated quantities and weighting methodologies for certain items as first identified on pages 22-23 of the Glock 9mm Evaluation Report) and, therefore, it is not possible to determine how the Army calculated the TEP.

Nevertheless Glock has been able to identify two major errors in the Army's calculation of the pricing for its 9mm proposal, which was submitted as a one-gun solution, and resulted in a bias

in favor of Sig Sauer's P320 proposal, which was submitted as a two gun (full size and compact) solution. First, Section M.3.2.8.4.2 of the Solicitation states that:

The evaluated price for Part B Weapon (OP 2-10) will be computed by summing the evaluated prices for one MHS which meets the requirements for both the full size and compact or two MHS (Full Size and Compact), related accessories and FATs as follows: MHS FAT, Weapon System Component Package-Compact, MHS Production, Demonstration Models, Cutaway Models, Blank Conversion Kit FAT and production, M1041 Cartridge Conversion Kit FAT and production, Suppressor Kit Fat and production, and MHS General Officer Pistols. If a one-gun solution is proposed, any CLINs related to the compact MHS are not applicable. However, the evaluated quantities for the compact conversion kits, the compact suppressor kit and the compact general officer pistol will be added to the full size evaluated quantities, but not for the compact demonstration and cutaway models.

(Emphasis added). Despite the Solicitation explicitly stating that any "CLINs related to the compact MHS are not applicable" when a one-gun solution is proposed, during the February 17, 2017 debriefing, the Army admitted that it added the quantities for the compact MHS pistols to the full size MHS pistols when calculating the TEP for Glock's 9mm proposal.

The Army refused to provide the quantities used to calculate the TEP for Glock's 9mm proposal during the February 17, 2017 debriefing, other than to state that the quantity for no single item exceeded 550,000. The Solicitation's pricing worksheet for a one-gun solution provided for up to 550,000 full size MHS pistols, while the pricing worksheet for a two-gun solution provided for up to 550,000 full size MHS pistols and up to an additional 150,000 compact MHS pistols. Assume for example that the quantity of full size MHS pistols to be purchased was 450,000 and the quantity of the compact MHS pistols to be purchased was 100,000. Based on that assumption and the explicit terms of the Solicitation, the pricing for Glock's 9mm proposal should have been calculated based on only 450,000 MHS pistols in total because it was submitted as a one-gun solution, while the pricing for the Sig P320 should have been calculated based on a total of 550,000 MHS pistols, because it was submitted as a two gun solution. By deviating from the Solicitation,

the Army eliminated the substantial pricing advantage that Glock should have received by submitting a one-gun solution.

In addition, Section L.4.1.7.3 of the Solicitation required that the pricing for the proposals be evaluated based on up to 550,000 spare parts common to the full size and compact MHS pistols, and up to an additional 100,000 spare parts unique to the compact MHS pistol. Simply stated, more spare parts would be calculated in the price for a two gun solution to account for additional spare parts unique to the compact version. The Army deviated from the Solicitation by evaluating the price based on using less spare parts for a two gun solution. The Army stated that the:

evaluated price for Spare Parts was computed by summing the evaluated prices for [sic] based on whether the Offeror proposed a one or two gun solution. If an Offeror proposed a one-gun solution, the evaluated price is the sum of the evaluated prices for all proposed spare parts. If an Offeror proposed a full and compact MHS (two gun solution), the evaluated price is computed by summing the evaluated prices for the proposed full size and compact MHS' [sic] spare parts. If an Offeror is proposing a one-gun solution, an evaluated quantity of 27,500 was utilized for all spare parts. If Offerors are proposing a two-gun solution, the evaluated quantity for the full size MHS is 22,500 and 5,000 for the compact MHS.⁸

Glock 9mm Evaluation Report at pages 21-22. As noted on page 24 of the Glock 9mm Evaluation Report, the Army calculated only 22,500 spares for parts common to the full size and compact MHS, and an additional 5,000 spares only for those parts unique to the compact MHS.

This resulted in a one-gun solution, such as the Glock 9mm, being priced based on 27,500 spare parts for each pistol, but a two gun solution, such as the Sig P320, being priced based on only 22,500 spare parts for each pistol and only an additional 5,000 spare parts unique to the compact version. This error resulted in the Army including fewer spare parts when calculating the price for a two gun solution, when the Solicitation required it to include more spare parts for a two

⁸ This language is based on Section M.3.2.8.4.4 of the Solicitation.

gun solution. The Army admitted this error during the February 17, 2017 debriefing, but refused to correct the evaluation reports.

The Army's deviation from the pricing calculations required by the Solicitation benefitted Sig Sauer, which had submitted the Sig P320 as a two gun solution, and had a detrimental effect on Glock's 9mm, which had been submitted as a one-gun solution. These errors were especially prejudicial to Glock because the Army relied on the pricing difference as the basis to deviate from the requirements of the Solicitation and award the contract to Sig Sauer without conducting the required PVT /DSE testing.

5. The Army Failed to Follow or Deviated from the Stated Criteria in the Solicitation by Not Properly Rating the Penetration of the Special Purpose Ammunition for Purposes of Collateral Damage Based on Factor 1 – Bid Sample Test Technical, Subfactor 3 – Characteristics of the Projectile

The Army deviated from the Solicitation with respect to Factor 1 – Bid Sample Test Technical, Subfactor 3 – Characteristics of the Projectile, by improperly rating the penetration of the special purpose ammunition for purposes of collateral damage.

Section M.3.2.3.2 of the Solicitation states that the:

Special Purpose cartridge will be evaluated for penetration and collateral damage potential. The final penetration depth in gelatin, of the deepest portion of the projectile will be observed in test in accordance with paragraph 3.5.1 of AR-PD-179 and verified in paragraph 4.5.1. Penetration beyond 14 inches increases level of risk of collateral damage.

Section 3.5.1 of the Purchase Description for the Special Purpose Ammunition, AR-PD-179, states that “[c]ollateral damage shall be measured to ensure unwanted post target damage is minimized. Average penetration depth shall be between 8.5”-14.6” (T), 11.5”-12.3” (O).” Despite the objective penetration of between 11.5”-12.3, the Army deviated from the Solicitation by giving a more favorable rating to any penetration below 11” than to penetration to the objective depth:

Penetration $\leq 11''$ were considered to be a very low risk of meeting the requirement
11'' < Penetration $\leq 12.5''$ were considered to be a low risk of meeting the requirement
12.5'' < Penetration < 14'' were considered to be a moderate risk of meeting the requirement
14'' < Penetration $\leq 17''$ were considered to be a high risk of meeting the requirement
Penetration > 17'' were considered to be Unacceptable

Glock 9mm Evaluation Report at page 9.

Pursuant to the terms of the Solicitation, the Army should have assigned the highest rating to ammunition that fell within the 11.5'' to 12.3'' objective penetration range for purposes of collateral damage. The Army deviated from the Solicitation by assigning the highest rating to any ammunition that penetrated less than 11''. In addition to deviating from the Solicitation, this rating is unreasonable because it does not factor in a minimum penetration depth, and would assign the highest rating to ammunition that does not penetrate deeply enough to be effective. The Glock 9mm Evaluation Report specifically noted that for the special purpose ammunition, "average measurements below 8.5 inches of penetration are considered unacceptable since penetrations below this threshold indicate a likelihood of diminished lethality." *Id.* at page 36.

Glock's 9mm special purpose ammunition had the following results. Median penetration at 50 meters was 12.08, which was considered a low risk of collateral damage and a significant strength. Median penetration at 25 meters was 13.05, which was considered a moderate risk of collateral damage and a strength. Glock 9mm Evaluation Report at page 35. The Glock 9mm's 50 meter penetration result met the objective for collateral damage and its 25 meter penetration result met the threshold for collateral damage, but the Army deviated from the Solicitation and did not assign it the highest score. Glock's 9mm proposal was evaluated as having four significant strengths and two strengths, but no weaknesses with regard to Factor 1 – Bid Sample Test Technical, Subfactor 3 – Characteristics of the Projectile. The Army's deviation from the

Solicitation in rating the collateral damage penetration factor of the special purpose ammunition resulted in Glock's 9mm proposal improperly being rated as only Purple/Good, instead of Blue/Outstanding for this factor.

6. The Army Failed to Follow or Deviated from the Stated Criteria in the Solicitation by Improperly Evaluating Factor 4 – License Rights – Ammunition

The Army rated Glock's 9mm proposal as Yellow/Marginal with respect to the License Rights – Ammunition factor. According to the Glock 9mm Evaluation Report, the Yellow/Marginal rating was chosen because of the royalty and lump-sum payment requirements which, according to the Army, render Glock's proposal unfavorable when combined with other components. The Army's determination is not reasonable, lacks a rational basis, and is otherwise arbitrary and capricious.

The Army's only criticism of the License Rights – Ammunition factor was with regard to Glock's subcontractor for the XM1157 blank ammunition. The Army was not critical of the licensing rights proposed by Glock's subcontractor for the special purpose, ball, and drilled dummy inert ammunition. Glock's subcontractor for the blank ammunition proposed: (1) a royalty payment of \$0.030 (or 6%, whichever is higher) per blank cartridge for all non-FMS⁹ orders and \$0.035 per cartridge (or 7%, whichever is higher) for all FMS orders; (2) a lump-sum payment of \$100,000; and (3) that sublicenses be restricted to NTIB¹⁰ members.

The Army stated that the royalty and the lump-sum payment required by Glock's subcontractor for the blank ammunition will "create a considerable cost burden and potential

⁹ "FMS" refers to foreign military sales.

¹⁰ "NTIB" refers to National Technology & Industrial Base.

restriction on future competition” (Glock 9mm Evaluation Report at page 48) – that conclusion, however, is without grounds, support, or merit. The 6% or 7% royalty and lump-sum payment for the blank ammunition compromises only a miniscule fraction of the overall value of the Solicitation. As noted on page 48 of the Glock 9mm Evaluation Report, the royalty and lump-sum combined amount to only \$0.072 per blank cartridge, and the maximum amount of blank cartridges on which the royalty could be owed is 2.4 million. This would amount to a maximum royalty of only \$172,000 over a twenty year period (*i.e.*, only \$8,640 per year), out of a Solicitation with a total evaluated IGCE price of \$574,527,279 (Glock 9mm Evaluation Report at page 65) — *i.e.*, approximately 0.03%. Similarly, the NTIB restriction with regard to blank ammunition only cannot have any significant effect on the Army’s ability to “achieve optimal product pricing” (Glock 9mm Evaluation Report at page 48) in the context of the ammunition licensing factor as a whole. Accordingly, the Army improperly assigned a Yellow/Marginal rating for this factor.

7. **The Army Failed to Follow or Deviated from the Stated Criteria in the Solicitation by Improperly Extending the Proposal Submission Deadline After it had Already Expired**

On January 26, 2016, the Army extended the “time for proposal(s)” “to 1 PM Monday February 1, 2016 Eastern Standard Time” by publishing an amendment to the Solicitation on the Federal Business Opportunities (“FBO”) website (www.fbo.gov) Exhibit A, Amendment 5. After the expiration of the extended deadline, on February 2, 2016, the Army published Amendment 7¹¹ to the Solicitation on the FBO website. Exhibit A, Amendment 7. Notwithstanding the fact that it was posted on February 2, 2016 — one day after the February 1, 2016 deadline had expired —

¹¹ Amendment 7 on the FBO website is identified as Amendment 6 in the body of the amendment. Amendment 6 on the FBO website was identical to Amendment 5 and is identified as Amendment 5 in the body of the amendment. The FBO website includes a disclaimer stating that “What is called Amendment 6 in FBO is a duplicate of Amendment 5. Please ignore this Amendment 6.”

Amendment 7 to the Solicitation set forth a back-dated effective date of January 28, 2016, and stated:

Please be advised that the solicitation closing date has been extended from February 1, 2016 at 1 PM to February 12, 2016 at 1 PM Eastern Standard Time. Offerors who have already submitted proposals may use this opportunity to revise or supplement their proposals should they so desire.

Exhibit A, Amendment 7. Amendment 7 does not provide an explanation regarding the Army's purported justification for the extension of the deadline to receive proposals, and it is directly contrary to Section L.1.3 of Amendment 4 to the Solicitation, which states that "Proposals received after the date and hour specified will NOT BE ACCEPTED." At the debriefing held on February 17, 2017, the Army revealed that two new proposals were received for the first time after February 2, 2016, within the time frame contemplated by Amendment 7; however, the Army refused to identify or otherwise provide any information regarding these two proposals.

The Army improperly attempted to extend the deadline to accept proposals after the 1:00 pm February 1, 2016, deadline had expired, which is not permitted under the Federal Acquisition Regulations. In particular, 52.215-1(c)(3)(ii)(A) provides that:

Any proposal, modification, or revision received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—

(1) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(2) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(3) It is the only proposal received.

Accordingly, any proposals received after 1:00 pm on February 1, 2016, were improperly accepted by the Army. If one of those proposals was for the Sig P320, it was untimely and should have been disqualified.

B. REQUEST FOR RULING AND RELIEF REQUESTED.

For the foregoing reasons, Glock respectfully requests a ruling by the Comptroller General of the United States. Glock requests the following relief: (1) that it be selected as an awardee so that its 9mm proposal can be evaluated pursuant to the PVT / DSE testing required by Section H of the Solicitation; (2) that the Army be required to rate the reliability of the Glock 9mm and the compact Sig P320 pursuant to Factor 2 – Bid Sample Test Other, Subfactor 2 - Initial Reliability Compact Function; (3) that the Army be required to properly evaluate Glock's 9mm proposal with respect to the Joint Warfighter Ergonomics, Early Warfighter Acceptance, Characteristics of the Projectile, and License Rights – Ammunition factors based on the guidelines set forth in the Solicitation; (4) that the Army be required to properly calculate the TEP for Glock's 9mm proposal and the Sig P320 based on the guidelines set forth in the Solicitation; and (5) that if the Sig P320 proposal was received after the 1:00 pm February 1, 2016 deadline, that it be disqualified.

Glock respectfully requests a hearing. A hearing is necessary to fully address the issues in this protest due to the complex nature of the technical specifications and pricing requirements for the MHS Solicitation. A hearing will also permit Glock to address specific questions with respect to the Solicitation that may help this office in reaching its decision.

Finally, Glock respectfully requests a protective order be entered.

Respectfully submitted,
RENZULLI LAW FIRM, LLP



John F. Renzulli

cc: Mr. Kevin Puma (via email)
Army Contracting Command - Picatinny
ACC-NJ-SW
Bldg. 9 Phipps Rd.
Mail Stop: Bldg. 10
Picatinny, NJ 07806-5000
Phone: (973)724-6612
E-mail: kevin.p.puma.civ@mail.mil

Mr. Vincent Turco (via email)
Army Contracting Command - Picatinny
ACC-NJ-SW
Bldg. 9 Phipps Rd.
Mail Stop: Bldg. 10
Picatinny, NJ 07806-5000
Phone: (973)724-2016
E-mail: vincent.f.turco.civ@mail.mil

PROTESTER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Protester, Glock, Inc., hereby requests the following documents be provided to it, as such documents are relevant to a resolution of the protest based on the seven grounds enumerated therein.

For purpose of this request the term "document" refers to the original or any copy of a writing or other form or record preserving information which is or may be in the possession, custody or control of any and all Government agencies involved in the Solicitation No. W15QKN-15-R-0002, any division or support thereof, and/or any of its officers, employees, contractors, consultants, or agents. The term "document" includes, but it is not limited to, contracts, proposals, acquisition planning documents, requisitioning documents, reports, records, lists, notes, books, correspondence, telegrams, communications, schedules, working papers, photographs, drawings, charts, video and audio recordings, forms, computer "print outs," disks or diskettes, e-mail, voice-mail, any other preserved information in any form, and includes all drafts and final documents, originals and copies different from the originals because of alterations, notes or comments contained therein.

Documents Requested

1. All documents prepared by the Government with regard to Solicitation No. W15QKN-15-R-0002 ("Solicitation").
2. All documents relied upon by the Government to prepare the Solicitation.
3. All bids and/or proposals submitted by Sig Sauer, Inc. in connection with the Solicitation.
4. The Phase I Final Evaluation Source Selection Report for the Sig P320.

5. Evaluation Notices, responses to Evaluation Notices, and/or revised proposals related and/or pertaining to the Sig P320.

6. Any documents and/or correspondence provided to, or submitted by, Sig Sauer, Inc. to the Government related to the Solicitation.

7. Any correspondence with Sig Sauer, Inc. related and/or pertaining to the Solicitation.

8. All documents related and/or pertaining to the Bid Sample Test (BST) conducted on the Glock 9mm pursuant to Section M of the Solicitation.

9. All documents related and/or pertaining to the Bid Sample Test (BST) conducted on the Sig P320 pursuant to Section M of the Solicitation

10. All documents related and/or pertaining to the decision to make a single award without first conducting the Production Verification Test / Down Select Evaluation (PVT / DSE) required by Section H of the Solicitation.

11. All documents related and/or pertaining to the Production Verification Testing to be performed on the Sig P320.

12. All evaluation documents related to the Glock 9mm, including, but not limited to, those completed by the subject matter expert (SME) overseeing the participants who evaluated the Glock 9mm pursuant to Factor 1 – Bid Sample Test Technical, Subfactor 4 – Joint Warfighter Ergonomics, of Section M of the Solicitation.

13. All evaluation documents related to the Sg P320, including, but not limited to, those completed by the subject matter expert (SME) overseeing the participants who evaluated the Glock 9mm pursuant to Factor 1 – Bid Sample Test Technical, Subfactor 4 – Joint Warfighter Ergonomics, of Section M of the Solicitation.

14. All completed Appendix J Warfighter Evaluation Questionnaires related to the Glock 9mm.
15. All completed Appendix J Warfighter Evaluation Questionnaires related to the Sig P320.
16. Any Independent Government Cost Estimate (IGCE) related to and/or pertaining to the Solicitation 2, including, but not limited to, the “one-gun solution IGCE” referenced on page 65 of the Glock 9mm Evaluation Report, the IGCE applicable to the two-gun solution, and the ICGE validated on 18 August 2015 – revalidated 22 August 2016.
17. All documents related and/or pertaining to the calculation of the Total Evaluated Price (TEP) for the Glock 9mm.
18. All documents related and/or pertaining to the calculation of the Total Evaluated Price (TEP) for the Sig P320.
19. The Competitive Range Determination approved on 29 August 2016.
20. The Pre-Negotiation Objective Memorandum, approved 14 September 2016.
21. All Source Selection Evaluation Board (SSEB) evaluation worksheets for all factors and sub-factors in the Solicitation.
22. The SSEB Initial Report dated 29 August 2016 and submitted Final Reports 12 December 2016.
23. The Source Selection Advisory Council (SSAC) Comparative Analysis dated 12 December 2016.
24. The Procuring Contracting Officer (PCO) Source Selection Record.

25. The testing and/or evaluation data related to the Factor 2 – Bid Sample Test Other, Subfactor 2 - Initial Reliability Compact Function (or single Gun Candidate) testing on the Glock 9mm pursuant to Section M of the Solicitation .

26. The testing and/or evaluation data related to the Factor 2 – Bid Sample Test Other, Subfactor 2 - Initial Reliability Compact Function (or single Gun Candidate) testing on the Sig P320 pursuant to Section M of the Solicitation.

27. Documents related and/or pertaining to the Army's decision not to rate the results of the testing conducted pursuant to Factor 2 – Bid Sample Test Other, Subfactor 2 - Initial Reliability Compact Function (or single Gun Candidate) pursuant to Section M of the Solicitation. An unredacted version of the Source Selection Decision Document (SSDD) and documents used and/or relied upon to prepare the Source Selection Decision Document.

28. Any acquisition plan(s) applicable to the Solicitation.

29. Documents related and/or pertaining to the Army's decision to extend the deadline to submit proposals from February 1, 2016, to February 12, 2016, after the expiration of the February 1, 2016 deadline.