

INTRADEPARTMENTAL CORRESPONDENCE

September 29, 2015
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BPC #15-0296

TO: The Honorable Board of Police Commissioners

FROM: Inspector General, Police Commission

SUBJECT: OFFICE OF THE INSPECTOR GENERAL'S INVESTIGATION OF THE
DEPARTMENT'S PROCUREMENT PRACTICES

RECOMMENDED ACTION

REVIEW and APPROVE the Office of the Inspector General's Investigation of the Department's Procurement Practices.

DISCUSSION

The Office of the Inspector General (OIG) investigated the Department's procurement procedures related to the Department's acquisition of its Smith & Wesson duty pistol. During that investigation, the OIG determined that Department personnel were not adhering to Department policies related to the product evaluation process and also identified several ethics related concerns. The OIG's findings and recommendations are detailed in the attached report.

I am available to provide any information the Board may require.

E-Copy – Original Signature on File with the Police Commission

ALEXANDER A. BUSTAMANTE
Inspector General
Police Commission

Attachment

LOS ANGELES POLICE COMMISSION
INVESTIGATION OF THE
DEPARTMENT'S PROCUREMENT PRACTICES



Conducted by the

OFFICE OF THE INSPECTOR GENERAL

ALEXANDER A. BUSTAMANTE
Inspector General

September 29, 2015

**OFFICE OF THE INSPECTOR GENERAL
INVESTIGATION OF THE DEPARTMENT'S
PROCUREMENT PRACTICES**

I. EXECUTIVE SUMMARY

In May 2014, the Office of the Inspector General (OIG) was informed that Los Angeles Police Department (LAPD or Department) personnel had concerns regarding the testing and evaluation of the newly contracted Department issued Smith and Wesson (Smith & Wesson) duty pistol.¹ Based upon these concerns, the OIG initiated an investigation into the entire product evaluation and acquisition process to determine whether any irregularities or misconduct existed with the Department's process in acquiring this duty pistol or other products. During that same month, the OIG notified members of the Department's Command Staff about the scope of the inquiry and began requesting the production of documents and emails related to the acquisition. During the investigation, the OIG analyzed the assembled documents and emails, conducted interviews of individuals involved with the process, and consulted with the City Attorney's Office, the City Ethics Commission, and other experts.

The OIG investigation determined that Department personnel did not comply with existing policies and procedures governing the testing and evaluation of new equipment. Specifically, Department policy requires Policy and Procedures Division (PPD) to coordinate and supervise all aspects of the product evaluation process.² In this case, PPD was not involved in any aspect of the process. Additionally, the Supply Section of Fiscal Operations Division (FOD), which supports the Los Angeles Police Department in the procurement and acquisition of items, was also not involved during the process until after the contract was awarded to the selected vendor.

The OIG found that these deviations were not unique to the procurement of the Smith & Wesson pistol and had similarly occurred with several other equipment items previously procured by the Department.

Although PPD was not involved in the product evaluation and the competitive bid process of this firearm, several members of the Department's Firearms and Tactics Section (FTS), Training Division, were involved in most aspects of the process.³ These individuals made the request for the new firearm, tested the available firearms that met their requested specifications, made recommendations regarding the firearms, and participated in the acquisition process. Shortly after the contract was awarded, FTS personnel requested that Smith & Wesson provide their Unit with a discounted price on privately-purchased firearms.

¹ Smith & Wesson firearms are manufactured by Smith & Wesson Holding Corporation. Any Smith & Wesson representatives mentioned in this report should be considered employees of the Holding Corporation.

² Los Angeles Police Department Product Evaluation Manual, Pages 1 & 2.

³ Officers assigned to FTS act as instructors for new officers, in-service officers, police personnel from outside agencies, and firearms qualification. The Department considers FTS personnel subject matter experts in the area of tactics and firearms.

The OIG has discussed its findings with the Department and provided it with a series of recommendations designed to strengthen the procurement process, prevent ethics violations, and preclude unnecessary personnel from influencing the process. Among these recommendations, the OIG requested that the Department strengthen its ethics policies and training related to actual and apparent conflicts of interests, as well as make efforts to further educate Department personnel on the City's ethics requirements. The Department has begun revising its policies and procedures in an effort to address many of these concerns.

II. BACKGROUND

In the last 35 years the Department has contracted three pistol manufacturers to provide either revolvers or semi-automatic handguns. In the modern era the standard issue gun was the Smith & Wesson K-38 Combat Master six shot revolver. The adoption of the Berretta Model 92 semi-automatic pistol in the 1980s signaled the end of the wheel gun era for LAPD. In September 2002, Special Investigation Section began researching the Glock weapon system for the Department, which Chief William Bratton ultimately approved for the Department. On September 10, 2003, selected models of the Glock manufactured 9mm, .40 caliber, and .45 caliber semi-automatic pistols were approved for all Department personnel who chose to purchase them as primary, back-up and off-duty pistols.

On November 8, 2005, the Los Angeles Police Commission approved the Department's Report advising that the City's Department of General Services (GSD) had begun the procurement process to purchase the Glock pistol as the primary duty weapon issued to new officers. The Glock was the standard issued duty weapon from 2005 until 2013, when it was replaced by the Smith & Wesson M&P.

Sometime in 2010, members of FTS, who were responsible for firearms related training, became concerned that Glock was prone to malfunctions and communicated their concerns to command staff.⁴ In 2010, Department personnel attended an annual firearms conference in Las Vegas, called the SHOT Show, which is the world's premier exposition of combined firearms, ammunition, law enforcement, cutlery, outdoor apparel, optics, and related products and services.⁵ During the conference, the Department asked representatives from Glock, Smith & Wesson, and Springfield Armory to provide the Department with striker fire pistols for testing and evaluation.⁶

⁴ 2010 Pistol Testing Report, Page 1.

⁵ The Shooting, Hunting, and Outdoor Trade Show (SHOT Show) and Conference.

⁶ Striker fired pistols have fewer parts than the Department's prior system. It is a single-action weapon with no external hammer. The single action trigger ensures that each trigger pull, from the first through the final round of the magazine, requires the same amount of force.

In October 2011, FTS personnel completed the testing and evaluation of the Glock Gen 4, Smith & Wesson M&P, and Springfield Armory XD-M pistols. A detailed report was completed which concluded that the Glock and Smith & Wesson models met Department specifications, but the Springfield Armory pistol did not. The report concluded that the Smith & Wesson “[o]utperformed the competition in almost every single category.”⁷ Based on the results of the test, the Department selected Smith & Wesson as the new service pistol.⁸

On October 24, 2011, the Department informed GSD that it had selected Smith & Wesson, requesting GSD to approve the selection without a bidding process because the Smith & Wesson product qualified as a “sole source” exception to the process.^{9 10}

On November 16, 2011, Smith & Wesson signed the contract to service the Department with the M&P pistol. This contract, however, was never executed by the City. According to the Director of Supply Chain Services, GSD, the Department could not “sole source” the Smith & Wesson pistol because another firearm’s manufacturer; namely, Glock, also produced a firearm that met the Department’s specifications.

On October 30, 2012, FTS personnel met with representatives from Glock. Glock representatives were interested in continuing their relationship with the Department and offered the Department an enhanced service and maintenance package on their firearms, as well as warranty for all Glock pistols carried by Department personnel for the entirety that those firearms were registered with the Department Armory.¹¹

On January 24, 2013, based upon a recommendation from FTS personnel, the Department submitted a letter to GSD indicating that the Glock pistol “performed the better of the two pistols,” and the Department had chosen the Glock as the “sole source” for the new pistol contract.¹² The letter also noted Glock agreed to include an enhanced maintenance and parts package for all City owned and privately purchased Glock pistols authorized by the Department, during the life of the contract at no cost to the City or officers. Upon receipt of the “sole source” letter, GSD again advised the Department that they could not “sole source” this type of weapon because other manufacturers also produced a striker fired pistol that met the Department specifications.

⁷ 2010 Pistol Testing Report, Page 82.

⁸ The Department recommended S&W as a sole source.

⁹ Procurement of equipment is governed by the City of Los Angeles. The Code states that the GSD is the Departmental Administrative Authority responsible for conducting purchases on behalf of the City’s Council-controlled Departments.

¹⁰ Most acquisitions over a certain value are subject to the competitive bidding process. There are some limited exceptions to the bidding process. For example, in certain situations, only one supplier can be identified to provide a compliant product or service and therefore a bidding process is unnecessary.

¹¹ See Glock memo, dated January 31, 2013, item 4.

¹² Los Angeles Police Department correspondence, dated January 24, 2013, to GSD.

In April 2013, after the Department's two attempts to sole source different firearms, GSD began a procurement process for the Department's new service pistol, in accordance with the City of Los Angeles Administrative Code Section 9.1.¹³ On April 24, 2013, GSD convened a pre-bid meeting at City Hall South with potential bidders and outlined the specifications for the pistol.¹⁴

On July 25, 2013, GSD advised Glock that their bid would be approved on August 1, 2013. After the initial award, GSD then notified Glock that its product warranty did not meet the bid specifications.¹⁵ On July 26, 2013, after the initial award, GSD advised Glock that the deviation from the specification was material and therefore the bid was considered "non-responsive."

On August 1, 2013, FTS personnel sent GSD an email detailing the Department's position on the warranty.¹⁶ In an email dated August 1, 2013, FTS personnel explained that the Glock pistol would withstand and satisfactorily perform up to 40,000 rounds fired, or for all intents and purposes, the pistol would be guaranteed for the average use of a 25-year veteran.¹⁷ Additionally, FTS personnel explained that the Department was satisfied with the existing Glock limited lifetime warranty. FTS personnel concluded that they were confident that the Glock would continue to meet the Department's future needs.

A determination was made that the Glock bid was in fact "non-responsive," and GSD then awarded the contract to Adamson Police Products for the Smith & Wesson pistol.¹⁸

This change in the Department issued service pistol was not presented to the Commission for its review of the evaluation and selection process for this weapon.

III. OIG'S INVESTIGATION

A. Testing, Evaluation and the Department's Product Evaluation Manual

The OIG's review of the testing and evaluation of the striker fire pistols revealed that Department personnel did not adhere to the guidelines set forth in the Product Evaluation Manual (PEM). The current PEM requires PPD to manage and oversee the entire product evaluation process. Specifically, the Manual states that all product evaluation requests must be forwarded

¹³ The Department of General Services is the Purchasing Agent for all purchase of material, supplies, equipment and equipment rental, or repair and maintenance services. Their authority is in accordance with the provisions of City Charter Sections 371 and 380.

¹⁴ During the pre-bid process, Glock, Inc. and Smith & Wesson Holding Corporation submitted questions to the City regarding the bid.

¹⁵ City of Los Angeles Quotation/Auction Event Details, Event 3616, Page 8.

¹⁶ Based on documents provided by the Department, the OIG determined that FTS personnel entered into telephonic and written correspondence with the Office of the City Attorney and GSD regarding the Glock warranty.

¹⁷ According to FTS, an officer with 25 years on the Department will shoot between 10 & 12 thousand rounds in order to meet the required pistol qualification.

¹⁸ The OIG's investigation did not include a full review of the GSD procurement process and contract award.

to PPD and that PPD conducts all need assessments. The entire product evaluation process is coordinated and supervised by PPD. Once the evaluation is complete, the final evaluation is submitted through the chain of command to PPD. A recommendation of the product is made by PPD and forwarded through the chain of command to the Chief of Police.¹⁹

Here, the OIG found that PPD was not involved in any aspect of the product evaluation. From 2010 to 2013, neither FTS personnel nor their supervisors provided PPD with details of this firearm evaluation. At the conclusion of the pistol testing, a recommendation was sent up the chain of command, bypassing PPD completely.²⁰ The record further shows that after a meeting with Glock representatives in 2012, the Department again attempted to justify the Glock pistol as a "sole source." GSD denied the "sole source" request and eventually began the formal competitive bid process. In October 2013, GSD eventually awarded the contract to Adamson Police Products, a Smith & Wesson authorized dealer, for the Smith & Wesson pistol. Neither FOD nor PPD were aware of the product evaluation or the bidding process for this new pistol.

On January 29, 2014, after the contract was awarded, PPD was provided, for the first time, a copy of the relevant paperwork related to the pistol contract to place in their files. In contrast, FTS personnel were involved in almost all stages of this acquisition.²¹

B. Ethics Concerns

The OIG identified several ethics related concerns during its investigation involving Department personnel. Specifically, FTS personnel who were involved in the product evaluation and acquisition process used their position and relationship with the Smith & Wesson Holding Corporation to obtain discounted firearms for private purchases that were exclusively for members of the Unit.

Shortly after the Department entered into a contract for the Smith & Wesson pistol, the Department inquired whether sworn personnel could privately purchase the pistols at the contract price. Adamson Police Products indicated that it could not provide the contract price for any private purchases of the firearm.

In January 2014, Department personnel attended the 2014 SHOT Show in Las Vegas. During this event, they met with representatives from Smith & Wesson Holding Corporation and asked about special pricing for all Department employees who sought to privately purchase the Department approved Smith & Wesson pistol. Smith & Wesson representatives explained they would not be able to extend any special pricing for privately purchased pistols. Unbeknownst to the Department, during that same show, FTS personnel had a private conversation with Smith & Wesson representatives and requested that FTS personnel be allowed to purchase

¹⁹ Los Angeles Police Department Product Evaluation Manual-Section 1.3, Page 6.

²⁰ Discussions with PPD revealed that this was a fairly common occurrence and that Department personnel did not usually seek input or approval from PPD prior to testing new equipment.

²¹ Although this case involved FTS personnel, the OIG determined that historically Department personnel have routinely avoided PPD when assessing equipment that the Department was contemplating purchasing.

Smith & Wesson pistols at a discounted rate. The Smith & Wesson representatives agreed to a one-time, bulk purchase of firearms and magazines exclusively for FTS personnel.

FTS personnel sought Department permission to purchase these discounted firearms, but instead of going through their chain of command, FTS personnel went directly to a Staff Officer for approval. Once approved, 42 FTS officers purchased 67 pistols in one bulk purchase order.²² No other Department personnel were included in this order.

FTS personnel and supervisors created a written agreement that FTS personnel were required to sign before purchasing a discounted firearm. This agreement required, among other things, the purchaser to acknowledge that they were purchasing a substantially discounted firearm and that this purchase was permitted because these weapons would be used in the scope of their duties as firearms instructors. FTS personnel would guarantee that they would maintain personal ownership and possession of the pistol for at least five years.

FTS personnel bundled their purchase of these 67 firearms into a single order.²³ FTS officers were instructed to provide the "full amount required in cash" to one of its members by March 31, 2014. That individual then obtained a cashier's check in the amount of \$27,165.75, and then delivered it to Smith & Wesson Holding Corporation for the firearms. Smith & Wesson then shipped the discounted pistols and magazines to the Federal Firearms Licensed (FFL) gun store located at the Los Angeles Police Revolver and Athletic Club (LAPRAAC) in Elysian Park.

During this investigation, the Department indicated to the OIG that these private purchase orders for FTS personnel were necessary because under the new contract with Adamson Police Products, pistols were allocated for new recruits but not for the firearms instructors.²⁴ The OIG, however, noted that new recruits were issued the Smith & Wesson M&P 9 mm pistol, whereas FTS personnel were allowed to purchase different pistol models and calibers.

The OIG reviewed the relevant Department rules governing these purchases. The Department's policies and procedures governing conflicts of interest, contacts with vendors, and ethics in general are limited, and there is no specific mention of the City's ethics regulations within any of the Department's literature.

The OIG also reviewed the City of Los Angeles Governmental Ethics Ordinance (Ethics Ordinance). The Ethics Ordinance, Los Angeles Municipal Code Section 49.5.1, et seq. states, in relevant part:

²² Eight of the purchasers were Form 700 filers (*Statement of Economic Interests*): General Status Report, October 29, 2014.

²³ Police officers can generally purchase firearms from a distributor at a law enforcement price. In the case of the Smith & Wesson M&P 9mm, an officer would generally be able to purchase the pistol for approximately \$455. FTS personnel were able to purchase Smith & Wesson pistols at an average discount of approximately \$125 to \$130 under the already discounted, law enforcement prices available.

²⁴ Los Angeles Police Department Correspondence, dated September 30, 2014, to OIG.

Section 49.5.2 (J) (2) (b) defines a restricted source as, "A person who has entered into, performs under, or seeks a contract with the City Official's agency."

Section 49.5. 2 (J) (2) (c) defines a restricted source as, "A person who, during the prior 12 months, attempted to influence the official in any City action that would have a material financial effect on the person."

Section 49.5.5 Misuse of City Position or Resources, states in pertinent part, "City officials, agency employees ... shall not misuse or attempt to misuse their positions ... to create or attempt to create a private advantage or disadvantage, financial or otherwise, for any person."

Section 49.5.8 (C) (1) Gifts, states, "In addition to the state requirements and restrictions identified in Subsection B, City officials shall also comply with the following gift restrictions for restricted sources. (1) A City official shall not solicit a gift from a restricted source. A City official shall not accept a gift that exceeds the applicable gift limit from a restricted source."

Section 49.5.8 (C) (2) states, "A person who is a restricted source to a City official shall not offer or make a gift that exceeds the applicable gift limit to that City official."

Section 49.5.8 (C) (4) (b) states, "For all other restricted sources, the applicable gift limit is one-hundred dollars (\$100) per calendar year."

"City official" means an elected City officer or an agency board member, officer, employee, commissioner, or consultant who, because of the individual's service to an agency, is required to file a statement of economic interests pursuant to the Political Reform Act.

"Agency" means the City of Los Angeles or any City department, bureau, office, board, commission, or entity required to adopt a conflict of interests code subject to City Council approval.

The Ethics Ordinance prohibits City officials from soliciting or accepting a gift that exceeds the applicable gift limit from a restricted source. If Smith & Wesson was a restricted source as defined above, then Department employees who obtained a discount on firearms that was in excess of \$100 may have received a gift that exceeded the gift limit if the employee qualified as a "City official" under the Ethics Ordinance. The same may be true of "City official" employees who authorized other employees to receive a discount in excess of \$100.

The Ethics Ordinance also prohibits employees from misusing their positions to create a private financial advantage. Thus, Department employees, including those involved in the testing and evaluation of the Smith & Wesson pistol, are not allowed to use their positions to obtain a discount in violation of the ordinance.

IV. CONCLUSION AND RECOMMENDATIONS

Through the investigation, the OIG determined that the existing product evaluation is relatively decentralized. PPD generally does not monitor the existing product evaluations, and the Department does not require its personnel to adhere to the PEM when assessing new products or equipment. The OIG also determined that the Department's personnel may not be properly educated on existing ethics rules that govern their contacts with vendors who are doing business with the Department. In order to ensure the quality of future product evaluations, prevent fraud or abuse involving vendors, or the appearance of such, and ensure high ethical standards, the OIG makes the following recommendations to the Commission:

1. The OIG recommends that the Department strengthen the PEM to ensure that PPD have the sole responsibility to initiate, direct, coordinate, supervise and approve all product evaluations and that PPD may authorize subject matter experts to become involved in the process if, in PPD's judgment, such expertise is necessary to properly evaluate a product.
2. The OIG recommends that the Department ensure that all PPD personnel involved in product evaluations certify that they have received and read the relevant ethics provisions. The OIG also recommends that prior to a Department subject matter expert becoming involved in the Department's product evaluation, PPD provide each subject matter expert with the ethics rules governing the product evaluation process. Each subject matter expert must certify their understanding of the rules prior to actually testing any product.
3. The OIG recommends that PPD create sufficient tracking mechanisms and checklists for all product evaluations so that the process and the individuals involved with the evaluations can be effectively supervised and audited.
4. The OIG recommends that PPD incorporate the City of Los Angeles Governmental Ethics Ordinances into the Department Manual and shall incorporate those provisions by reference into the updated PEM. The OIG further recommends that the Department educate its personnel on these ethical requirements.

For each of the above recommendations, the Department must consult with the City Attorney's Office, the Ethics Commission, and the Office of the Inspector General prior to implementing any of these changes to ensure complete compliance with all applicable rules and regulations. Additionally, the OIG will begin monitoring all future acquisitions to ensure Department policy and City ethics rules are enforced.