

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
**CONTRACT APPEALS BOARD**

PROTEST OF:

VISTA CONTRACTING, INC.	)	
	)	CAB No. P-0726
Under IFB NO. POFA-2005-B-0040-BJ	)	

For the Appellant Vista Contracting, Inc.: Thomas O. Mason, Esq., and Francis E. Purcell, Jr., Esq., Williams Mullen. For the District of Columbia: Howard Schwartz, Esq., and Talia S. Cohen, Esq., Office of the Attorney General.

Opinion by Administrative Judge Warren J. Nash, with Chief Administrative Judge Jonathan D. Zischkau, concurring.

**OPINION**

*(LexisNexis Filing ID 11324690)*

Vista Contracting, Inc. (“Vista”) protests the award of a contract to Skanska USA Building, Inc. (“Skanska”), for the construction of an indoor firing range at 3665 Blue Plains Drive, S.W., Washington, D.C., for the Metropolitan Police Department (“MPD”). Vista alleges that its proposal was technically acceptable and lower priced, and that the contracting officer improperly determined that Vista failed to meet the solicitation’s special standards of responsibility. The District responds that it properly awarded the contract to Skanska. We conclude that Vista has not shown error in the District’s determination of Vista’s non-responsibility and accordingly we deny the protest.

**BACKGROUND**

On August 25, 2005, the District of Columbia Office of Contracting and Procurement (“OCP”), on behalf of the MPD, issued IFB POFA-2005-B-0040-BJ for construction of an indoor firing range. (Agency Report (“AR”) Ex. 1). Section L.26.1 of the IFB required the contractor and key personnel to show that they had knowledge of and experience in the construction of a walk-down firing range that would be configured without shooting booths but with fixed pneumatic firing systems. Section L.26.1 contains the following language:

The Contractor, including key personnel assigned to perform the work on the indoor firing range, must demonstrate knowledge of and experience in the construction of a walk-down firing range that is configured without shooting booths but includes fixed pneumatic target systems. The bidder shall provide the following information with its bid for each similar firing range constructed:

- a. Time Period of the construction;
- b. Name and location of range;

- c. Name of contact person; and
- d. Phone number of contact person.

The District will not find responsible any bidder that does not provide, with its bid or within 5 calendar days of request by the Contracting Officer, information adequate to determine its compliance with the stated Special Standards of Responsibility.

(AR Ex. 1). By amendment, the District extended the closing date of the IFB to October 3, 2005. (AR Ex. 1). Six bidders submitted bids. (AR Ex. 11). According to the contracting officer, only Skanska submitted adequate information that allowed the District to determine that Skanska had complied with Section L.26.1. (AR Ex. 11).

By letter dated October 27, 2005, OCP sent letters to four of the remaining bidders requesting information to determine whether those bidders complied with Section L.26.1. (AR Exs. 5, 6). Only Vista responded to the District's request, by letter dated November 1, 2005. (AR Ex. 7). Vista stated that it would employ a reputable and experienced Firing Range Manufacturer. (AR Ex. 7). In the letter, Vista stated:

We believe the following projects demonstrate our experience in the construction of Firing Ranges:

1. FBI – Fire Range, 900 Penn Ave., NW, (1993); Contact: Tony Wildgruber, 202-436-8050. Project Description: Remove 9 lane Firing Range and install new range including, but not limited to replacement of bullet trap system, epoxy flooring, acoustical baffles.
2. FBI – HEPA Exhaust Filter for Small Pistol Range, 900 Penn Ave., NW; (1994); Contract: Tony Wildgruber, 202-436-8050. Project Description: Improve exhaust system for Pistol Range.
3. FBI – Ballistic Wall for Outdoor Firing range; (1992); Contact: Ron Chiodi, 202-324-2459 or Jane Brown, 202-324-2458. Project Description: Install ballistic wall 500 feet long, 12 feet high, including but not limited to concrete footers, steel beams, timber, paint, steel plates, etc.

On November 4, 2005, Eric Coard, Senior Executive Director, Corporate Support, Metropolitan Police Department, evaluated Vista's response and concluded that the information presented by Vista did not "adequately relate to Vista's involvement or experience in constructing walk down firing ranges." (AR Ex. 8). Bobby Jones, OCP's contract specialist, attempted to verify the information set forth in Vista's November 1, 2005 letter. (AR Ex. 13). OCP provided the following information in its Verification of References document:

The Contract Specialist, Bobby Jones called Mr. Tony Wildgruber (reference) at FBI, 900 Pennsylvania Ave. on several occasions without success. However, after calling the second reference, Mr. Ron Chiodi, it was learned that Vista had constructed a ballistic wall for an outdoor firing range. He had no knowledge of Vista's participation in the construction of a complete firing range and that the range, 900 Pennsylvania Ave. was constructed by Specialty Construction Management (SCM) approximately two years ago. Contacted SCM and spoke with Monty, 202-832-7250. Monty had no record of Vista's involvement with the construction of that range.

On 11/10/05, Mr. Tony Wildgruber was contacted. He stated that the firing range in question was renovated two years ago by SCM, but that the original range was built by Vista. That particular range is considerably smaller at 9-point vs. the 15-point range to be built as a replacement for the current MPD range at the Police Training Academy. Mr. Wildgruber did not provide confirmation that the FBI range was a walk-down range but stated that it may be possible to use as such.

The references' information received by MPD differs from the information received by OCP. In order to resolve the issue, OCP requested permission to visit and observe the FBI's range. For some reason, the FBI refused permission for OCP to visit their facility. For further information, Mr. Wildgruber (electrical engineer) referred me to the Director of Range Construction/Maintenance. The Director of construction/maintenance is Mr. Juan Inga. The Contract Specialist contacted Mr. Inga on 11/15/05 to follow up on the previous conversation he had with MPD representative, Mr. Eric Coard concerning the builder of their firing range. Mr. Inga confirmed that the FBI's firing range was upgraded two years ago by SCM from a Caswell system to a Snail lead abatement system and that Vista may have been the firm who constructed the range over 15 years ago. The firing range supposedly constructed by Vista at the FBI facility on Penn. Ave is an 8 lane indoor range and not specifically a walk-down range.

On November 16, 2005, Mr. Jones and the assistant commodity manager concluded that Vista "has not demonstrated the knowledge of and experience with constructing a walk-down firing range as specified in Section L.26.1 of the solicitation." (AR Ex. 13).

On November 21, 2005, the Deputy Mayor for Operations and Chief Procurement Officer determined that only Skanska's bid complied with the requirements set forth in Section L.26.1, since only Skanska had previous experience in constructing a walk-down firing range. (AR Ex. 9). The CPO determined that Vista was not responsible because Vista's references did not confirm that Vista had constructed a walk-down indoor firing range. (AR Ex. 9).

On January 23, 2006, the District awarded to Skanska a contract for construction of the walk-down indoor firing range. (AR Ex. 12). Vista filed this protest on February 8, 2006.

## DISCUSSION

Vista asserts in its protest that the District should have awarded the contract to Vista since Vista's bid was technically acceptable and Vista's price was lower than Skanska's price. The District responds that the District properly awarded the contract to Skanska since the contracting officer reasonably determined that Skanska was the only bidder that met the special standard of responsibility set forth in the IFB. We conclude that the District properly awarded the contract to Skanska.

The IFB required the bidder to show that it could perform the contract in compliance with the special standards of responsibility set forth in Section L.26.1. The District required bidders to demonstrate that they had the experience and expertise needed to build the firing range set forth in the IFB. The IFB does not contain a definition of the term "walk-down firing range."<sup>1</sup> Vista asserts that it has experience in building the required range.

The District's contract specialist and MPD program personnel attempted to verify Vista's assertions regarding Vista's experience in building walk-down firing ranges. Bobby Jones, OCP's contract specialist, attempted to verify the information set forth in Vista's November 1, 2005 letter. (AR Ex. 13). Vista provided three references, but only the first reference dealt with a complete indoor range. (AR Ex. 7, 13). The vague information provided by the FBI suggested that the FBI range was not expressly a "walk-down firing range" but "it may be possible to use as such." The FBI's Director of Construction Maintenance in a subsequent discussion with OCP's contract specialist stated only that Vista may have been the firm which constructed the FBI range approximately 15 years ago, that the range is an 8 lane indoor range, and that it was not specifically a walk-down firing range.

Vista did not submit the required special responsibility information in its bid. Vista had an opportunity to provide further information to show that it met the special standards of responsibility. Vista was uniquely positioned to provide to the District sufficient information that the District needed to verify whether Vista met the requirements of Section L.26.1. Since the District could not verify Vista's assertions regarding its experience, and the FBI contacts tended to contradict that the first reference met the requirements, we see no error in the District's non-responsibility determination.

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<sup>1</sup> Vista did not object to the District's assertion that the contract drawings set forth an adequate description of the project, notwithstanding the fact that the IFB itself did not explicitly define "walk-down firing range." After reviewing the drawings, the Board agrees that the drawings set forth an adequate description of the project and that the District could properly determine whether a bidder had experience in building that type of firing range.

Vista also argues that the District ignored the experience of Vista's proposed subcontractors. Although Vista proposed two possible alternate subcontractors to perform work, Vista did not submit the information required by Section L.26.1 to demonstrate that either prospective subcontractor possessed knowledge and experience constructing the specified type of walk-down firing range.

The contracting agency made reasonable efforts to verify Vista's compliance with the special standards of responsibility through repeated attempts to obtain information from the FBI concerning Vista's first reference. The information garnered from the FBI representatives support the conclusion of the contracting officer that Vista had not demonstrated "knowledge of and experience in the construction of a walk-down indoor firing range that is configured without shooting booths but includes fixed pneumatic target systems" as required by IFB Section L.26.1.

We conclude that Vista has not shown that the contracting officer erred in determining that Vista did not meet the special standards of responsibility set forth in Section L.26.1. Accordingly, we deny the protest.

DATED: May 19, 2006

/s/ Warren J. Nash  
WARREN J. NASH  
Administrative Judge

CONCURRING:

/s/ Jonathan D. Zischkau  
JONATHAN D. ZISCHKAU  
Chief Administrative Judge