



**G A O**

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**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

# Decision

**Matter of:** ICON Consulting Group, Inc.

**File:** B-310431.2

**Date:** January 30, 2008

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Molonai T. Hola, ICON Consulting Group, Inc., for the protester.  
Maj. Christopher L. McMahan, Kevin C. Probasco, Esq., Department of the Air Force,  
for the agency.  
Linda C. Glass, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

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## **DIGEST**

Protest challenging agency's corrective action taken in response to earlier Government Accountability Office protest is denied; corrective action that included amending the solicitation, reopening discussions, and requesting revised proposals from the remaining unsuccessful offerors, was a reasonable response to the protester's contention that agency misled protester in discussions and fairly provides protester an opportunity to compete for an award.

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## **DECISION**

ICON Consulting Group, Inc. challenges the adequacy of the agency's corrective action in response to its protest of the award of multiple construction contracts pursuant to Request for Proposals (RFP) NO. FA8201-07-R-0003, issued by the Department of the Air Force for design/build construction solutions for facilities supported by Hill Air Force Base, Utah. ICON, an 8(a) firm, asserts that the corrective action unfairly excludes the protester from competing for the two awards reserved for 8(a) firms.

We deny the protest.

The RFP was issued on November 8, 2006 as a multiple award competitive construction acquisition based on a general statement of work to be further defined within each individual task order. It provided for award on a best value basis of up to five contracts, with up to two of the awards reserved for 8(a) business concerns. RFP § 2.0. The RFP provided for two evaluation phases. Under the first phase, offers received from 8(a) concerns would be evaluated separately, and up to two

awards could be made. Under the second phase, all remaining offers were to be considered—including offers from 8(a) concerns that did not receive an award under the first phase of the evaluation—and up to three awards would be made. RFP § M.2.1. The RFP specifically stated that the government was not required to award any minimum number of contracts. RFP § M.2.

Nine proposals were received and evaluated. All proposals were included in the competitive range, including ICON's, and discussions were held with all offerors. During discussions, ICON was asked to explain why sample mechanical and structural calculations were not included in its proposal. ICON responded by directing the agency to the mechanical calculations in its proposal, but maintained that, in ICON's view, structural calculations are not typically included in a preliminary concept design. The record is unclear about whether the agency then affirmatively indicated that it wanted structural calculations, and ICON did not provide them. ICON subsequently was rated unacceptable under the design capability subfactor because the evaluators concluded that ICON's failure to provide structural calculations constituted a material deficiency in its proposal. Ultimately, the agency made four awards, two of which were to 8(a) concerns.

After receiving a debriefing, ICON filed an agency-level protest and asserted that the Air Force did not effectively communicate the requirement for structural calculations and therefore improperly rejected ICON's proposal for its lack of those calculations. ICON also argued that the agency improperly included "unreasonable" offers in the competitive range. The agency denied the protest and maintained that the requirement for structural calculations was clarified during discussions. ICON filed a protest with our Office on September 21, 2007, raising the same issues.

In response to ICON's protest, the Air Force filed a request for summary dismissal, which we granted in part, and denied in part. We dismissed ICON's protest issue concerning the inclusion of certain proposals in the competitive range on the basis that ICON failed to state a valid basis of protest and also noted that ICON was included in the competitive range. However, we declined to dismiss the issue involving whether the Air Force communicated its requirement for structural calculations to the protester.

In response to our partial dismissal of ICON's protest, the agency notified our Office that it intended to take corrective action, including amending the solicitation to clearly state its requirement for structural calculations, reopening discussions with the offerors who were included in the competitive range but were not selected for award, and awarding one additional contract. The agency specifically decided not to terminate the original four awards, including the two awards to 8(a) firms. Upon consideration of the Air Force's corrective action, and ICON's opposition to it, we dismissed the protest as academic on November 2, 2007.

Thereafter, ICON filed a timely challenge to the agency's corrective action, asserting that the agency's remedy unfairly deprived ICON, an 8(a) company, of an

opportunity to compete for the two reserved 8(a) contracts, and only provides ICON an opportunity to compete for a non-reserved contract as part of a full and open competition among the remaining 8(a) and non-8(a) offerors. ICON argues to properly remedy the situation the Air Force should either: award a fifth contract to ICON; limit the competition for the fifth contract to only 8(a) firms that did not submit structural calculations; award contracts to all companies that competed; or cancel all awards and resolicit.

Contracting officials in negotiated procurements have broad discretion to take corrective action where the agency determines that such action is necessary to ensure fair and impartial competition. Patriot Contract Servs. LLC et al., B-278276.11 et al., Sept 22, 1998, 98-2 CPD ¶ 77 at 4. We will not object to the specific proposed corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action. Networks Elec. Corp., B-290666.3, Sept. 30. 2002, 2002 CPD ¶ 173 at 3.

The Air Force explains that its proposed corrective action was expressly designed to remedy ICON's contention that it was never advised of the requirement for structural calculations, did not receive meaningful discussions on the matter, and was thereby deprived of a fair opportunity to compete for an award; the Air Force does not concede that any of the other offerors were treated unfairly, and in fact, the record shows that the other offerors provided structural calculations. The agency believes that allowing ICON to compete for one award against the five remaining unsuccessful offerors--three small businesses and two large businesses--adequately remedies ICON's complaint.

We agree. In our view, the corrective action here is well within the discretion afforded to contracting agencies in these circumstances. ICON's primary objection to the corrective action is its apparent belief that it is unfair not to allow ICON, an 8(a) firm, to compete for one of the two 8(a) contracts already awarded. However, the solicitation did not guarantee ICON, or any other 8(a) firm, that the agency would, in fact, make two 8(a) awards. As stated above, while the solicitation stated that the agency anticipated an award of up to five contracts, with up to two awards reserved for 8(a) concerns, the solicitation specifically stated that the agency was not required to award any minimum number of contracts.

Moreover, the solicitation specifically provided that those 8(a) firms that did not receive an award during the 8(a) evaluation phase would be given an opportunity to compete during the second phase of the evaluation. As we stated in our partial dismissal decision--wherein we did not grant the agency's dismissal request with respect to the discussions issue--if ICON were to prevail on its argument that the discussions were misleading, the Air Force would need to provide the company with meaningful discussions, an opportunity to revise its proposal, and an opportunity to be considered for an award. This is just what the Air Force proposes to do.

In sum, we think the agency's approach to corrective action, although more limited than ICON would prefer, addressed ICON's concerns and provided all the relief to which the protester was reasonably entitled.<sup>1</sup>

The protest is denied.

Gary L. Kepplinger  
General Counsel

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<sup>1</sup> In addition, given the need to conduct discussions here, there is no legal basis for granting some of the alternative remedies ICON seeks, such as a directed award to ICON, or to all of the companies that submitted proposals.