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# Decision

**Matter of:** Scope Infotech, Inc.

**File:** B-414782.4; B-414782.5

**Date:** March 22, 2018

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## DIGEST

1. Issuance of a task order that included non-Federal Supply Schedule (FSS) items under a competition among FSS vendors was improper.
2. Protest challenging agency's evaluation of the awardee's quotation is denied where, despite the protester's assertions to the contrary, the solicitation did not mandate the pricing of all software provided as government furnished equipment, vendors were assessed on a common basis, and the awardee's professional compensation was reasonably evaluated in accordance with Federal Acquisition Regulation provision 52.222-46.

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## DECISION

Scope Infotech, Inc., a small business located in Columbia, Maryland, protests the issuance of a General Services Administration (GSA) Federal Supply Schedule (FSS) task order to Sparksoft Corporation, a small business located in Catonsville, Maryland, by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) under request for quotations (RFQ) No. 170454 for operations and maintenance of the data services hub system utilized to support healthcare exchanges. The protester challenges multiple aspects of the agency's evaluation.

We sustain the protest in part, and deny the protest in part.

## BACKGROUND

CMS issued the RFQ on January 20, 2017, pursuant to the procedures of Federal Acquisition Regulation (FAR) § 8.405-2, to small business vendors holding contracts under GSA schedule 70--commercial information technology equipment, software, and services.<sup>1</sup> RFQ at 1; Contracting Officer Statement (COS) at 1. The solicitation sought a vendor to provide information technology operations, maintenance, and support services to maintain CMS' data services hub, which permits computer systems and networks across multiple government agencies to communicate with each other, and permits the public to shop for health insurance in the private health insurance markets (known as exchanges). COS at 1. The agency intended to issue a fixed-price and time-and-materials task order consisting of a 1-year base period and four 1-year option periods.<sup>2</sup> RFQ at 1, 4. The RFQ provided for selection of the best-value vendor based on the following factors, which were listed in descending order of importance: technical understanding and approach; personnel qualifications and management plan; past performance; section 508 compliance; and price.<sup>3</sup> Id. at 8-9.

The RFQ required vendors to submit quotations in three separate volumes: business/price; technical; and business ethics, conflicts of interest, and compliance. Id. at 4-7. With respect to the business/price volume, vendors were instructed to provide a total price for each year for the fixed-price portion of the statement of work and complete a basis of estimate for the time-and-materials tasks outlined in the statement of work. Id. at 4. Vendors were also required to include any materials, travel, and/or other direct costs (ODC). Id. This volume also required the submission of information pursuant to FAR provision 52.222-46--Evaluation of Compensation for Professional Employees.

With respect to the technical volume, vendors were instructed under the technical understanding and approach factor to demonstrate their technical approach for completing the statement of work requirements, including anticipated risks and their approach for mitigating each risk. Id. Under the personnel qualifications and management plan factor, the RFQ instructed vendors to provide the labor categories and hours, and a plan to manage the staff based on their technical approach. Id. at 5. The RFQ also required vendors to provide a letter of commitment for each person not currently employed by the vendor, to include the date of availability, how long the

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<sup>1</sup> Section 8.405-2 of the FAR provides FSS ordering procedures for services requiring a statement of work.

<sup>2</sup> The RFQ provided that the operations and maintenance work would be ordered on a fixed-price basis; any enhancement and development work to the data services hub would be ordered on a time-and-materials basis. RFQ, Statement of Work, at 9, 45.

<sup>3</sup> Though not at issue in this decision, section 508 refers to the Rehabilitation Act of 1973, as amended, which generally requires that agencies' electronic and information technology be accessible to people with disabilities. See 29 U.S.C. § 794d.

commitment is binding and a signature both of the individual submitting the letter of commitment and the vendor's authorized official. Id.

As relevant here, the RFQ provided that the agency would evaluate technical understanding and approach by assessing the vendor's understanding of the statement of work and its techniques and procedures to ensure efficient, low risk performance. Id. at 8. The agency would evaluate price in accordance with FAR § 8.405-2(d) and assess the information submitted as required by FAR provision 52.222-46 to determine whether a vendor's compensation plan reflects a sound management approach and understanding of the contract requirements, including an assessment of the vendor's ability to provide uninterrupted high-quality work. Id. at 9. The professional compensation proposed would also be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with the vendor's total plan for compensation. Id.

CMS received six quotations in response to the solicitation. Agency Report (AR), Tab 6, Source Selection Decision (SSD), at 4-5. The agency evaluated quotations and issued questions to all vendors. COS at 2. As relevant to this protest, on April 14, the contracting officer sent an email to Sparksoft asking if it was possible to provide any of the non-FSS (open market) software licenses on Sparksoft's GSA schedule or on one of its teaming partner's schedules. Id. On April 17, the contracting officer also sent an email to Scope asking if it was possible to provide any of the open market software licenses on Scope's GSA schedule or on one of its teaming partner's schedules. Id.; AR, Tab 4M1, CO Email, Apr. 17, 2017 (12:34 p.m.). On April 20, the contracting officer sent an additional email to Scope to point out that the RedHat JBoss software licenses it quoted were open market items. COS, at 2; AR, Tab 4M3, CO Email, Apr. 20, 2017 (11:02 a.m.). The contracting officer asked Scope if it could look at providing these items through one of their partners'/subcontractors' GSA schedules. Id. On April 21, Scope responded that two companies, Carasoft and EC America, offered the JBoss software licenses on their GSA schedules; however, Scope noted that when purchased on the GSA schedule, the price discount from Carasoft would be removed, which would make the total cost of the JBoss software licenses higher.<sup>4</sup> AR, Tab 4M3, Scope Email, Apr. 21, 2017 (2:53 p.m.).

On April 26, based on the results of the initial evaluation and the vendors' answers to the contracting officer's questions, the contracting officer removed all vendors, aside from Scope and Sparksoft, from the competition. COS at 3. On April 28, the agency opened discussions with Scope and Sparksoft. Id.

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<sup>4</sup> Carasoft provides a price discount if the four software licenses are purchased as a bundle: (1) JBoss Fuse + BRMS 16 Core and (2) JBoss Fuse + BRMS 64 Core. Carasoft also provides the same software licenses on its GSA schedule contract as follows: (1) JBoss Fuse 16 core; (2) JBoss BRMS 16 core; (3) JBoss Fuse 64 core; and (4) JBoss BRMS 64 core.

The agency sent discussion letters to both Scope and Sparksoft to address questions regarding the vendors' assumptions and quoted software licenses. AR, Tab 4B, Sparksoft Discussion Letter, at 1-2; Tab 4D, Scope Discussion Letter, at 1-2. Each letter also noted that, "a significant portion [of the ODC software licenses] were quoted as open market items as defined in FAR part 8." Id. at 2. The agency asked, "[i]f at all possible, please provide a quote with no open market ODC's." Id. at 2. On May 1, the contracting officer held individual conference calls with each vendor. COS at 3. During these calls, the contracting officer discussed, among other things, whether the software licenses quoted by the vendors as ODCs were open market items. Id. The contracting officer also agreed to provide both vendors with a list of government furnished equipment (GFE) software licenses, which the agency would receive at the end of the incumbent contract and provide to the new contractor. Id. The contracting officer requested final quotation revisions by May 4. Id. at 4.

On May 2, the contracting officer emailed the vendors a spreadsheet listing the GFE software licenses CMS would provide to the awardee. AR, Tab 4F3, CO Email to Scope, May 2, 2017 (3:16 p.m.); Tab 4F4, CO Email to Sparksoft, May 2, 2017 (3:15 p.m.). In response to this email, Scope responded as follows, "this GFE list covers most of the ODC items we had listed. We will go ahead and revise our ODC list to exclude the items covered under GFE." AR, Tab 4F3, Scope Email, May 2, 2017 (3:43 p.m.). On May 3, the agency sent an updated GFE spreadsheet to the vendors, which included an expiration date for each software license. AR, Tab 4F3, CO Email to Scope, May 3, 2017 (9:28 a.m.); Tab 4F4, CO Email to Sparksoft, May 3, 2017 (9:28 a.m.); See AR, Tab 4E, GFE Software List.

The agency received final quotation revisions from both Scope and Sparksoft. AR, Tab 6, SSD, at 4. The contracting officer began reviewing the vendors' quotations and noticed a possible misunderstanding in Scope's business/price volume. COS at 4. The contracting officer emailed Scope on May 5 to request clarification that it intended to remove all GFE software from its ODC pricing. Id. The contracting officer's email provided as follows:

I notice there are no ODC costs in your updated quote besides travel costs. As you saw in the GFE list I provided, the [software] licenses CMS is providing as GFE do expire and will need to be renewed. I want to confirm that the updated quote you sent includes support of the licenses throughout the life of the contract as needed to complete the DSH [data services hub] work – perhaps as not separately priced.

AR, Tab 4G, CO Email to Scope, May 5, 2017 (2:27 p.m.). In response, Scope replied:

It is a misunderstanding on my part, I apologize. I assumed the items from the GFE list you provided will continue to be provided as GFE items under [the] DSH [data services hub] recompetes contract. I can redo the price sheet and submit it as if we are picking up all the GFE items as ODC, as they expire.

Id., Scope Email, May 5, 2017 (2:45 p.m.). On May 8, Scope submitted a revised quotation. Id., Tab 6, SSD, at 4.

The agency evaluated the quotations of Scope and Sparksoft and concluded that Sparksoft provided the best-value quotation. COS at 5. On May 31, CMS awarded the task order to Sparksoft and notified Scope of the award. Id.

On June 9, Scope filed a protest with our Office. In response, the agency notified our Office of its intent to take corrective action by re-evaluating the price quotations of both Scope and Sparksoft and issuing a new source selection decision. Based on the agency's notice, we dismissed the protest as academic on June 29. Scope Infotech, Inc., B-414782, June 29, 2017 (unpublished decision). The agency conducted a re-evaluation of the quotations, and on July 28, again awarded the task order to Sparksoft. COS at 6.

On August 4, Scope filed a second protest with our Office. After the GAO attorney assigned to the protest conducted an alternative dispute resolution conference, in which she informed CMS that she would likely sustain the protest based upon the agency's evaluation of the vendors' professional compensation, the agency notified our office of its intent to take corrective action by re-evaluating the quotations of Scope and Sparksoft and issuing a new source selection decision. Based on the agency's notice, we dismissed the protest as academic on October 27. Scope Infotech, Inc., B-414782.2, Oct. 27, 2017 (unpublished decision). The agency conducted a re-evaluation of the quotations, and on December 8, again awarded the task order to Sparksoft.<sup>5</sup> COS at 6.

On December 13, Scope filed this protest with our Office. Thereafter, on December 22, the agency published a justification and approval for other than full and open competition pursuant to FAR § 8.402(f) to add the bundled JBoss software licenses as open market items to Sparksoft's FSS task order award.<sup>6</sup> AR, Tab 1Q, JBoss Justification, at 1-5; See [https://www.fbo.gov/?s=opportunity&mode=form&id=ab47fb10689ebc40ee787cd3367a4cd7&tab=core&\\_cview=0](https://www.fbo.gov/?s=opportunity&mode=form&id=ab47fb10689ebc40ee787cd3367a4cd7&tab=core&_cview=0) (last visited, Mar. 16, 2018). The justification cited the authority at 41 U.S.C. § 253(c)(1), authorizing the use of other than full and open competition when there is only one responsible source and no other supplies or services will satisfy agency requirements. Id. at 2. The justification provided that Sparksoft was forced to quote the open market bundled JBoss software licenses because these items were not available on a GSA schedule. Id.

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<sup>5</sup> The task order award amount was \$44,225,676. AR, Tab 7a, Scope Unsuccessful Vendor Notice, at 1.

<sup>6</sup> Section 8.402(f) of the FAR permits an agency for administrative convenience, to add items not on the Federal Supply Schedule (also referred to as open market items) to a FSS task order only if all applicable acquisition regulations pertaining to the purchase of the items not on the FSS have been followed. FAR § 8.402(f).

## DISCUSSION

Scope challenges the agency's evaluation of Sparksoft's quotation. The protester alleges that the agency's award is improper because Sparksoft's quotation contained open market items, which Scope quoted on Carasoft's GSA schedule. The protester also alleges that CMS' evaluation was unreasonable because Sparksoft's quotation is unacceptable. Scope also challenges the agency's evaluation of Sparksoft's professional compensation. We have reviewed all of the protester's allegations and as explained below, we sustain the protest because the agency unreasonably included the JBoss software licenses as open market items on Sparksoft's task order. While we do not address each of the remaining allegations, we have reviewed them all and find that none provide a basis to sustain the protest.<sup>7</sup>

### Open Market Items

Scope contends that the task order award was improper because Sparksoft quoted the JBoss software licenses as open market items. In response, CMS alleges that it properly issued the award pursuant to FAR § 8.402(f) because no vendor could provide the JBoss software licenses on a GSA schedule contract. We sustain the protest because Scope's quotation provided the JBoss software licenses on a GSA schedule contract and thus, the agency could not include the same JBoss software licenses on Sparksoft's order as open market items.

The FSS program, directed and managed by GSA, provides federal agencies with a simplified process for obtaining commonly used commercial supplies and services. FAR § 8.402(a). Orders placed using the procedures established for the FSS program satisfy the requirement for full and open competition. 41 U.S.C. § 152(3); FAR § 6.102(d)(3). Non-FSS products and services may not be purchased using FSS procedures; instead, their purchase requires compliance with the applicable procurement laws and regulations, including those requiring the use of competitive procedures. See FAR § 8.402(f); Symlicity Corp., B-291902, Apr. 29, 2003, 2003 CPD ¶ 89 at 4.

Here, the JBoss software licenses at issue are offered by Carasoft. As explained above, Carasoft's GSA schedule contract includes the JBoss software licenses as four separate items. Under the prior CMS contract, Carasoft offered a price discount to the

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<sup>7</sup> For example, Scope alleges that Sparksoft failed to quote certain F5 software licenses on a GSA schedule. The agency, as part of its previous corrective action, confirmed that Sparksoft's final revised quotation included fixed prices for these software licenses on a GSA schedule. AR, Tab 4N, Contracting Officer (CO) and Sparksoft Emails, Nov. 15, 2017 (2:34 p.m. and 2:55 p.m.). We find no basis to sustain the protest based on these allegations.

incumbent contractor if the four software licenses were purchased as a bundle (i.e. JBoss Fuse + BRMS 16 core and JBoss Fuse + BRMS 64 core). While Carasoft assigns these two bundled products separate product numbers from the four software licenses on its GSA schedule, there is no dispute among the parties that, aside from a price discount, the four JBoss software licenses on Carasoft's schedule are the same software licenses as those bundled for the price discount. In this regard, whether ordering the bundled or unbundled products, Carasoft provides four separate JBoss software licenses.

The agency first asserts that its award was proper because Scope's quotation did not include the JBoss software licenses on Carasoft's GSA schedule contract as the protester alleges. The agency explains that Scope's final quotation provides, after listing the four software licenses individually: "[The incumbent] had bundled discount for Fuse + BRMS. GSA schedule does not offer bundle discount." See AR, Tab 2q, Scope Revised Price Quotation, ODC Tab, at 1. CMS contends that this reference to the bundled price discount indicates that Scope did not obtain the JBoss software licenses on Carasoft's GSA schedule. We disagree.

Scope's quotation provided a spreadsheet with line entries for each of its ODCs. Four of these line entries quoted Carasoft's JBoss software licenses and listed Carasoft's schedule number, Carasoft's GSA schedule price, and a discounted price Scope received from Carasoft for this procurement. Id. As stated above, the entries also included a note referencing the price discount received by the incumbent. Id. On this record, we find no basis to support the agency's conclusion that Scope quoted the bundled open market software. Scope's quotation provided all the necessary information for the agency to confirm that Scope was offering the four separate JBoss software licenses on a GSA schedule (i.e. Carasoft's GSA schedule number, GSA schedule price, and a price discount). Had the agency reviewed this information, the agency could not have reasonably concluded that Scope failed to quote these items on a GSA schedule. Scope's reference to the incumbent price discount simply acknowledged that the discount was not available on a GSA schedule. Accordingly, we find the agency's conclusion that Scope failed to provide the JBoss software licenses on a GSA schedule was unreasonable.

We also find that the agency's next argument--that CMS could properly rely on Carasoft's bundle-item price discount to support its claim that no vendor could provide these items on a GSA schedule--is unreasonable. The agency asserts that Sparksoft was forced to quote the bundled JBoss software licenses as open market items because they are not sold on a GSA schedule. However, as explained above, the software licenses were, in fact, available on GSA schedule contracts as four separate items. Indeed, the exact software licenses quoted in Sparksoft's proposal as open market items were quoted by Scope on Carasoft's GSA schedule. While the agency makes much of the fact that Carasoft provides different product numbers for these software licenses, whether bundled or unbundled, and provides a price discount for the bundled items, the agency's claim that the price discount prevents Sparksoft from quoting these items on a GSA schedule is unreasonable and circumvents the very

purpose of the FSS. That is, to award contracts to vendors quoting scheduled items. Rapiscan Sys., Inc., B-401773.2, B-401773.3, Mar. 15, 2010, 2010 CPD ¶ 60 at 3 (citing general rule that all items under an FSS solicitation must be included on the successful vendor's FSS contract). Accordingly, we find that the agency could not reasonably rely on a bundle-item price discount as a basis to find that the JBoss software licenses were not available on a GSA schedule.

In sum, we find that the agency unreasonably concluded that Scope did not provide the JBoss software licenses on a GSA schedule and that no vendor could provide these items on a GSA schedule. Thus, we cannot find the agency's inclusion of the open market items on Sparksoft's order pursuant to FAR § 8.402(f) to be reasonable. In this regard, FAR § 8.402(f) permits a contracting officer to "add items not on the Federal Supply Schedule (also referred to as open market items)" to a FSS task order only if all applicable acquisition regulations pertaining to the purchase of the items not on the FSS have been followed. FAR § 8.402(f). Here, the JBoss software licenses could not reasonably be considered to be "items not on the Federal Supply Schedule" because they were quoted by Scope on Carasoft's GSA schedule contract. For these reasons we sustain the protest.<sup>8</sup> We further conclude that Scope, the only other vendor in the competition who was favorably evaluated at a fair and reasonable price, was prejudiced by the agency's inclusion of the open market items because, but for these errors, the protester could have had a substantial chance for award. See DRS ICAS, LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 21-22.

### Sparksoft's Evaluation

Scope argues that Sparksoft's proposal is unacceptable because it failed to price all GFE software licenses as ODCs. Relatedly, Scope argues that Sparksoft's quotation is unacceptable because its technical approach, which provided that it would not make significant changes to the current software licensing, is inconsistent with its price, which did not include pricing for five software licenses provided as GFE. Scope further argues that the agency failed to treat the vendors equally because it permitted Sparksoft to quote only a portion of the required GFE software licenses, while it required Scope to price all GFE software licenses. Scope also challenges the agency's evaluation of Sparksoft's professional compensation.

Where, as here, an agency issues a solicitation to FSS contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation. SRM Group,

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<sup>8</sup> We need not reach the question of whether the agency's justification and approval for one responsible source was reasonable because, as stated above, we find that the agency could not reasonably include the JBoss software licenses as open market items pursuant to FAR § 8.402(f). However, we note our concern with the reasonableness of the agency's conclusion that only one responsible source exists where these software licenses are sold on the open market as well as on multiple GSA schedule contracts.

Inc., B-410571, B-410571.2, Jan. 5, 2015, 2015 CPD ¶ 25 at 4. In reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate the quotations; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation and applicable procurement laws and regulations. OPTIMUS Corp., B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. A protester's disagreement with the agency's judgment does not establish that an evaluation was unreasonable. DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2.

Scope raises multiple related arguments all based upon the same underlying premise-- that vendors were required to price all GFE software licenses as ODCs. We find no basis to support this conclusion. The protester has not pointed to anything in the solicitation that would require such pricing, and based on our review, we have found none. Instead, Scope argues that the agency's communications with the vendors included the requirement to price all GFE software licenses. We do not agree.

As stated above, during separate conference calls with each vendor, the contracting officer agreed to provide a list of GFE to the vendors. The GFE list contained the software licenses used by the incumbent contractor and included an expiration date for each license. AR, Tab 4E, GFE Software List, at 1. After Scope received the list of GFE software licenses, it revised its quotation to remove pricing for each of the GFE software licenses. AR, Tab 2P, Scope Price Quotation, May 4, 2017, ODC Tab, at 1. The contracting officer reviewed Scope's final revised quotation and recognized Scope's misunderstanding with respect to the GFE software licenses. COS at 4. In this regard, the contracting officer realized that Scope mistakenly believed that CMS would be providing the software licenses as GFE for the entire contract. Id. To correct this misunderstanding the contracting officer emailed Scope to explain that "[a]s you saw in the GFE list I provided, the licenses CMS is providing as GFE do expire and will need to be renewed. I want to confirm that the updated quote you sent includes support of the licenses throughout the life of the contract as needed to complete DSH [data services hub] work – perhaps as not separately priced."<sup>9</sup> Id.; AR, Tab 4G, CO Email to Scope, May 5, 2017 (2:27 p.m.). Scope confirmed its misunderstanding and submitted a revised quotation. AR, Tab 4G, Scope Email, May 5, 2017 (2:45 p.m.), at 1; Tab 2Q, Scope Revised Price Quotation.

Based on our review of record, we find that the contracting officer's communications did not provide a requirement to price all GFE. Rather, the communication was to correct

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<sup>9</sup> The contracting officer also emailed Sparksoft as follows: "[j]ust to confirm there was no misunderstanding around the ODCs/GFE, as you saw in the GFE list I provided, the licenses CMS is providing as GFE do expire and will need to be renewed. I want to confirm that the updated quote you sent includes support of the licenses throughout the life of the contract as needed to complete the DSH [data services hub] work." AR, Tab 4H, CO email to Sparksoft, May 5, 2017 (3:05 p.m.), at 1; COS at 4. Thereafter, Sparksoft confirmed its understanding of the ODCs/GFE list. COS at 4.

Scope's misunderstanding with respect to the agency's provision of these items throughout the life of the contract. Indeed, the contracting officer made clear that the licenses should be renewed only as needed to perform the work. The protester's allegations in this regard are not reasonable.

Relatedly, Scope also challenges the agency's evaluation of Sparksoft's price quotation asserting that the agency failed to recognize that Sparksoft's price is inconsistent with its technical approach. Sparksoft's technical quotation provided, "Sparksoft does not anticipate major changes to the current DSH [data services hub] architecture, so, we do not expect significant changes to software licensing." AR, Tab 3c, Sparksoft Technical Quotation, at 46. Scope argues that, since Sparksoft did not expect significant changes to software licensing, it was required to price all GFE software licenses, and that since Sparksoft did not price five software licenses listed as GFE, the agency should have found its quotation unacceptable. We disagree.

As above, we find no requirement for vendors to provide pricing for all software licenses provided on the GFE list. We also find no basis to conclude that Sparksoft's statement--that it did not expect significant changes to software license--is inconsistent with its price quotation or required it to price all GFE software licenses. In this regard, Sparksoft did not propose the same solution as the incumbent contractor. Thus, it is not unreasonable to expect differences in its pricing of the GFE software licenses. Moreover, as part of its previous corrective action, the agency conducted an evaluation of Sparksoft's ODCs to determine if the lack of pricing for the five specific software licenses called into question Sparksoft's ability to perform the contract. AR, Tab 5F, Sparksoft ODC Analysis, at 1-3. Based upon this review, the agency found no issues with the software licenses Sparksoft included in their quotation and concluded that the price quotation: "1) matched their technical approach and 2) the excluded items . . . would not cause any changes to the DSH [data services hub], which could or would introduce unacceptable risk or problems for the Government." Id. at 2. On this record, we find the agency's evaluation unobjectionable.

Scope also alleges that the agency's evaluation was unequal because the agency required Scope to price all GFE software licenses while Sparksoft was permitted to provide pricing for only a portion of the licenses. Again, neither the RFQ nor the contracting officer's communications with the vendors mandated the pricing of all GFE software licenses. Furthermore, we find no unequal treatment as a result of the contracting officer's communications with the vendors because the contracting officer asked both vendors the same question. Compare AR, Tab 4C, CO Email to Scope, May 5, 2017 (2:27 p.m.), at 1, with Tab 4H, CO Email to Sparksoft, May 5, 2017 (3:05 p.m.). As the record demonstrates, Scope priced all software licenses listed as GFE because, as it explained in its communications with the contracting officer, "a central part of our proposed approach for DSH [the data services hub] is to continue the current hardware/software configuration and infrastructure." AR, Tab 4M2, Scope Email, Apr. 19, 2017 (11:16 a.m.). In this regard, Scope chose to implement the solution of the incumbent. However, Scope was free to maintain only the licenses that were required for performance of the contract. That Scope chose to implement the

solution of the incumbent does not require the agency to evaluate Sparksoft, or any other vendor, as if they offered the same solution as Scope. Accordingly, we find that the agency's evaluation in this regard was equal and in accordance with the solicitation criteria.

Finally, Scope argues that the agency's evaluation of Sparksoft's professional compensation was unreasonable. We find no basis to object to the agency's evaluation.

The purpose of FAR provision 52.222-46--Evaluation of Compensation for Professional Employees is to evaluate whether offerors will obtain and keep the quality of professional services needed for adequate contract performance, and to evaluate whether offerors understand the nature of the work to be performed. MicroTechnologies, LLC, B-413091.4, Feb. 3, 2017, 2017 CPD ¶ 48 at 8. In the context of fixed-price contracts, our Office has noted that this FAR provision anticipates an evaluation of whether an awardee understands the contract requirements, and has offered a compensation plan appropriate for those requirements--in effect, a price realism evaluation regarding a vendor's proposed compensation. Id. at 6-7. The depth of an agency's price realism analysis is a matter within the sound exercise of the agency's discretion. Apptis Inc., B-403249, B-403249.3, Sept. 30, 2010, 2010 CPD ¶ 237 at 9. In reviewing protests challenging price realism evaluations, our focus is on whether the agency acted reasonably and in a manner consistent with the solicitation's requirements. MicroTechnologies, LLC, supra, at 11.

Here, the agency conducted a thorough evaluation of the vendors' professional compensation plans to ensure that the plans reflected a sound management approach and understanding of the contract requirements, including an assessment of each vendor's ability to provide uninterrupted high-quality work. AR, Tab 5E, Professional Compensation Analysis. The agency compared the salary and benefits submitted by the vendors to the incumbent contractor's salary and benefits to determine if compensation levels were lower than those of the predecessor contractor. Id. To conduct this portion of the analysis the agency chose to use the mid-point of each vendor's professional compensation plan salary range. Id. The agency compared this number to the incumbent salary as well as reference salaries such as salary.com, glassdoor.com, and indeed.com. Id. For Sparksoft, the mid-point was the 75th percentile salary range. Id. Based on this analysis, the agency concluded that there was no evidence to suggest that Sparksoft's professional compensation plan salaries were out of line or otherwise not competitive. AR, Tab 6, SSD, at 27.

Scope argues that the agency's evaluation was unreasonable because the agency should have compared Sparksoft's 50th percentile range to the incumbent's rates. We find the agency's evaluation unobjectionable. As stated above, price realism analysis is a matter within the sound exercise of the agency's discretion. While Scope would have preferred that the agency conduct its analysis at the 50th percentile range, there is nothing in the solicitation that would require the agency to do so. Scope's disagreement with the agency choice of percentile range is unavailing. Sparksoft's professional

compensation plan provided that “although the salary [ranges] reference local and national surveys, Sparksoft may offer salaries beyond those listed for resources exceeding standards set for requirements such as education and experience.” AR, Tab 3L, Sparksoft Business/Price Quotation, Section 2.4, at 6. Moreover, the record demonstrates that Sparksoft’s quotation included signed letters of commitment, many of which are from incumbent employees. AR, Tab 3C, Sparksoft Technical Quotation, Appendix A, Resumes. Thus, we have no basis to question the agency’s conclusion that Sparksoft’s proposed compensation plan reflects a clear understanding of the work to be performed; demonstrates the ability to retain qualified personnel and employ a stable workforce; and includes realistic rates for professional compensation. AR, Tab 6, Award Decision, at 27.

## RECOMMENDATION

We recommend that the agency cancel the order to Sparksoft and assess its actual requirements. To the extent the agency chooses to move forward with this procurement, it should reevaluate proposals consistent with the RFQ and the rules applicable to FSS procurements, and make a new source selection. We also recommend that the agency reimburse Scope the reasonable costs of filing and pursuing the protest, including attorneys’ fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). Scope should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days of this decision.

The protest is sustained in part, and denied in part.

Thomas H. Armstrong  
General Counsel