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## Decision

**Matter of:** Blueprint Consulting Services, LLC, d/b/a Excelicon; Trillion ERP Venture Tech LLC

**File:** B-420190; B-420190.2; B-420190.3; B-420190.4; B-420190.5

**Date:** December 30, 2021

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Daniel Strouse, Esq., John J. O'Brien, Esq., Jason Moy, Esq., and Laurel Hockey, Esq., Cordatis LLP, for Blueprint Consulting Services, LLC, d/b/a Excelicon; and William A. Shook, Esq., The Law Offices of William A. Shook PLLC, for Trillion ERP Venture Tech LLC, the protesters.

Jeffery M. Chiow, Esq., Lisa N. Himes, Esq., and Stephen L. Bacon, Esq., Rogers Joseph O'Donnell, PC, for Appddiction Studio LLC, the intervenor.

Ervin N. Harris, Department of Homeland Security, for the agency.

Kasia Dourney, Esq., and Evan C. Williams, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protests alleging organizational conflicts of interest are denied where the protesters have neither demonstrated a conflict exists nor that the agency's consideration of potential conflicts was unreasonable.
2. Protests challenging the evaluation of the awardee's prior experience are denied where the awardee properly derived its experience from work performed by its subcontractor.

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### DECISION

Blueprint Consulting Services, LLC, doing business as Excelicon, a small business of Washington, D.C., and Trillion ERP Venture Tech LLC, also a small business, of Reston, Virginia, protest the establishment of a blanket purchase agreement (BPA) with a contractor team led by Appddiction Studio LLC, under request for quotations (RFQ) No. 70FA3021Q0000042, issued by the Department of Homeland Security, Federal Emergency Management Agency (FEMA), for information technology (IT) sustainment and modernization services. The protesters argue that the agency miscalculated quotations, treated vendors unequally, and conducted an improper best-value determination. The protesters also contend that FEMA failed to adequately consider whether Appddiction's team has organizational conflicts of interest (OCI), and allege

that the awardee's quotation failed to comply with the applicable limitations on subcontracting.

We deny the protests.

## BACKGROUND

On June 18, 2021, the agency issued the RFQ, seeking quotations for application development, sustainment, and integration services supporting the agency's Recovery Technology Programs Division (RTPD), operating disaster recovery IT systems for both public and individual assistance. Agency Report (AR), Tab P, RTPD BPA Statement of Work (SOW) at 2; Excelicon Contracting Officer's Statement (COS) ¶¶ 1-3.<sup>1</sup> The RFQ was issued under the federal supply schedule (FSS) procedures of Federal Acquisition Regulation (FAR) subpart 8.4, as a set-aside for small businesses, and was limited to vendors holding contracts under FSS IT schedule 70. AR, Tab C, RFQ at 5; Excelicon COS ¶¶ 1-3

The RFQ contemplated the establishment of a single BPA, for a 1-year base period and four 1-year option periods, with a maximum order value of \$75 million over the five year term. RFQ at 5-6. Under the BPA, the agency could issue orders on a fixed-priced, labor-hour, or time-and-materials basis. *Id.* at 8. In conjunction with the establishment of the BPA, the RFQ also anticipated issuance of the first call order, for services supporting the National Emergency Management Information System-Individual Assistance (NEMIS-IA) recovery system. *Id.* at 59.

The RFQ advised that a BPA would be established with a vendor whose quotation represented the best value for the government, considering the following evaluation factors, in descending order of importance: (1) demonstrated prior experience; (2) management, staffing/hiring, and technical approach; and (3) price.<sup>2</sup> *Id.* at 61-62. For purposes of award, the non-price factors were more important than price. *Id.* at 62.

Further, the RFQ stated that the agency would employ a two-phased evaluation approach. *Id.* at 53-56. In phase 1, the agency would evaluate vendors' demonstrated

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<sup>1</sup> Throughout this decision, where a document has been submitted in the agency reports for both the Excelicon and Trillion protests, we will cite to the agency report tab, without specifying the particular protest. Where a document is included in only one of the protest records, citations will include a reference to the particular protest at issue.

<sup>2</sup> The RFQ provided that the demonstrated prior experience, and management, staffing/hiring, and technical approach factors would be evaluated based on a rating scale of "high confidence," "moderate confidence," and "low confidence," representing the government's confidence in a vendor's understanding of the requirement and its subsequent successful performance. RFQ at 62.

prior experience, based on their written responses to six specific questions concerning past performance of contracts of similar size, scope and complexity as the RTPD requirement. *Id.* at 53-54. Following the agency's evaluation of the phase 1 submissions, the agency would advise vendors as to whether they were likely to be viable competitors and should proceed to phase 2.<sup>3</sup> *Id.* at 54.

In phase 2, the agency was to evaluate the management, staffing/hiring, and technical approach factor, and price. *Id.* at 55. The management, staffing/hiring, and technical approach factor was to be evaluated during an oral presentation. *Id.* The agency was to assess the content of vendors' oral presentations based on responses to specific questions asked by FEMA, both written and provided to vendors in advance, and questions asked during the oral presentations. *Id.* at 62-63. The oral presentations were not to be recorded. *Id.* at 55.

With regard to price, the solicitation stated that the agency would evaluate vendors' prices for the first BPA order, NEMIS IA. *Id.* at 63. The RFQ provided for the evaluation of price reasonableness, but not price realism. *Id.* Price reasonableness was to be evaluated through comparison with other quoted prices and might include other price analysis techniques. *Id.*

The solicitation advised that vendors may structure their quotation submissions either as a General Services Administration (GSA) multiple award schedule contractor teaming arrangement or as a prime contractor/subcontractor(s) arrangement. RFQ at 53.

As relevant here, the RFQ provided that "[a]ll terms, conditions, & clauses of GSA Schedule 70 contract# TBD [to be determined] [of the successful FSS schedule 70 contract holder] are also applicable." *Id.* at 6.

Nine vendors submitted quotations in response to the first phase of the solicitation, including Appdiction, Trillion, and Excelicon.<sup>4</sup> Excelicon COS ¶ 12; Trillion COS ¶ 9. Appdiction's quotation indicated that it intended to perform the requirement with its two major subcontractors, Favor TechConsulting, LLC (FTC) and BDR Solutions, LLC. Excelicon COS ¶ 13.

After the phase 1 evaluation, Excelicon received an advisory notification that its quotation was not among the highest-rated, and was unlikely to be selected for award. Excelicon COS ¶ 23. Excelicon nevertheless elected to participate in phase 2. *Id.* In contrast, Trillion's and Appdiction's phase 1 submissions were rated high and both vendors were invited to participate in phase 2, oral presentations. Trillion COS ¶ 14.

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<sup>3</sup> Vendors were permitted to proceed to phase 2 of the evaluation even if they were advised against proceeding. RFQ at 54.

<sup>4</sup> Excelicon is an incumbent contractor who is currently performing a portion of the work to be procured under this BPA. Excelicon Protest at 7.

Following the oral presentations, the relevant evaluation results were as follows:

	<b>Excelicon</b>	<b>Trillion</b>	<b>Appddiction</b>
<b>Phase 1: Demonstrated Prior Experience</b>	Moderate Confidence	High Confidence	High Confidence
<b>Phase 2: Management, Staffing/Hiring and Technical Approach (Oral Presentation)</b>	Moderate Confidence	High Confidence	High Confidence
<b>Total Evaluated Price</b>	\$29,083,318	\$27,131,005	\$22,941,805

Excelicon AR, Tab L, Source Selection Decision (SSD) at 2; Trillion AR, Tab I, SSD at 2.

The contracting officer, who also served as the source selection authority (SSA), evaluated the price quotations and concluded, based on adequate price competition, that all vendors' prices were fair and reasonable. Excelicon AR, Tab L, SSD at 2. The SSA then reviewed the consensus evaluation results for the non-price factors, and performed a best-value analysis. *Id.*; Trillion AR, Tab I, SSD at 3. The SSA noted that Excelicon submitted the highest-priced quotation, which was not among the highest-rated for the non-price factors; hence, the SSA found it not the most advantageous to the government, and excluded it from further consideration. Excelicon AR, Tab L, SSD at 2-3.

Finding that Trillion and Appddiction were "considered technically equal" and both demonstrated that they were "highly capable and qualified to meet the government's needs," the SSA concluded that Appddiction's quotation, with its lower price, represented the best value for the government. Trillion AR, Tab I, SSD at 3. On September 16, 2021, the agency made award to Appddiction. Trillion COS ¶ 26. These protests followed.

## DISCUSSION

The protesters raise a number of challenges to the agency's evaluation and resulting award decision. They first contend that FEMA failed to adequately consider whether Appddiction's team had organizational conflicts of Interest (OCI) arising from the work of its subcontractor, FTC. The protesters also argue that the agency misevaluated quotations, treated vendors unequally, and conducted an improper best-value determination. Finally, the protesters claim that the awardee's quotation failed to comply with the applicable limitations on subcontracting clause. While we do not address all of the protesters' arguments in this decision, we have considered them all and conclude that none provides a basis to question the agency's evaluation and source selection decision.

## Organizational Conflict of Interest

Excelicon and Trillion first allege that Appddiction has an unmitigable impaired objectivity conflict of interest arising from the work of its proposed subcontractor, FTC. Excelicon Protest at 7-10; Excelicon Comments and Supp. Protest at 2-5; Trillion Supp. Protest at 3-6. The protesters contend that FTC, while performing work for FEMA on the cloud management services (CMS) contract, the term of which ended in November of 2021, was responsible for recommending which FEMA systems should be migrated to the cloud, modernized, or retired. Here, on the NEMIS IA call order, the awardee would be performing tasks that possibly include migration to the cloud of certain RTPD legacy systems.<sup>5</sup> Accordingly, the protesters assert that FTC's objectivity, and by extension Appddiction's, will be impaired as FTC was able to recommend which FEMA systems should be migrated to the cloud under the CMS contract and now would be responsible for migrating those FEMA systems to the cloud under the current order.

According to the protesters, the agency's review of this OCI either failed to adequately address the potential significant conflict or unreasonably concluded that it does not exist. We have reviewed the underlying record and find no basis to object to the agency's OCI conclusions here.

Contracting officers are required to avoid, neutralize, or mitigate potential significant conflicts of interest so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR 9.504(a), 9.505. The situations in which OCIs arise, as described in FAR subpart 9.5 and the decisions of our Office, can be categorized into three groups: (1) biased ground rules; (2) unequal access to information; and (3) impaired objectivity. See, e.g., *McConnell Jones Lanier & Murphy, LLP*, B-409681.3, B-409681.4, Oct. 21, 2015, 2015 CPD ¶ 341 at 13. As relevant here, an impaired objectivity OCI arises where a firm's ability to render impartial advice to the government would be undermined by the firm's competing interests. FAR 9.505(a); *Diversified Collection Servs., Inc.*, B-406958.3, B-406958.4, Jan. 8, 2013, 2013 CPD ¶ 23 at 5-6.

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<sup>5</sup> Initially, in addition to its CMS contract-related OCI allegations, Excelicon also argued that FTC has an impaired objectivity OCI because it is performing independent verification and validation (IV&V) of the work it would be performing under the current BPA. Excelicon Protest at 8-9. However, after receiving the agency report, the protester withdrew its allegations. Excelicon Comments and Supp. Protest at 1 n.1.

In contrast, Trillion's OCI challenge includes the IV&V contract requirement. Trillion Supp. Protest at 3-6. In addition, while also challenging the CMS requirement discussed above, Trillion asserts an OCI challenge with respect to FTC's performance of the enterprise architecture and engineering technology innovation professional services (EATIPS) contract. *Id.* We have reviewed the allegations regarding the IV&V and EATIPS contracts, and although we do not discuss them here, we find they provide no basis to sustain the protest.

The identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. *Guident Techs., Inc.*, B-405112.3, June 4, 2012, 2012 CPD ¶ 166 at 7; see also *Axiom Res. Mgmt., Inc. v. United States*, 564 F.3d 1374, 1382 (Fed. Cir. 2009). A protester must identify “hard facts” that indicate the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is not enough. *TeleCommunication Sys. Inc.*, B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3. We review an agency’s OCI investigation for reasonableness, and where an agency has given meaningful consideration to whether a significant conflict of interest exists, we will not substitute our judgment for the agency’s absent clear evidence that the agency’s conclusion is unreasonable. *TISTA Sci. & Tech. Corp., Inc.*, B-408175.4, Dec. 30, 2013, 2014 CPD ¶ 17 at 6.

As background, in May 2021, FEMA’s Office of the Chief Technology Officer (OCTO) issued a task order to FTC, to assist with the analysis of FEMA’s existing on-premises data center systems, and develop strategies for migrating these systems to FEMA’s cloud environments. AR, Tab N, Contracting Officer’s (CO’s) OCI Investigation Report at 2; AR, Tab R, CMS SOW at 1. The strategies developed by FTC/FEMA were then to be implemented by SHR Consulting Group, a contractor under the cloud brokerage services BPA; a separate BPA not at issue in these protests. AR, Tab N, CO’s OCI Investigation Report at 2.

The current RTPD requirement anticipated that the selected vendor would provide sustainment, development and modernization support services for all existing RTPD IT systems, some of which were to be migrated to the cloud. See RTPD BPA SOW at 5.

After the instant protests were filed with our Office, the contracting officer conducted an investigation into a potential conflict of interest that might arise from FTC’s performance of the CMS contract. See AR, Tab N, CO’s OCI Investigation Report. In particular, the contracting officer reviewed the contracts at issue and the SOWs for those requirements, and consulted with the program offices responsible for both requirements, *i.e.*, the RTPD and the Office of the Chief Technology Officer (OCTO). *Id.* at 2. Based on this investigation, the contracting officer concluded that on the CMS contract, FTC will not provide any oversight of the RTPD IT systems that are encompassed by the current requirement, including the implementation and migration of those systems to the cloud, or an assessment of whether those systems would be capable of being migrated to the cloud. *Id.* at 3. Ultimately, the contracting officer found that there was no overlap between the requirements on the CMS contract and the current call order that could create an OCI. *Id.*

Subsequently, another contracting officer conducted a supplemental investigation into the same possible OCI involving FTC, and confirmed the prior finding that no OCI exists. AR, Tab O, Supp. CO’s OCI Investigation Report at 1. That second contracting officer reached his conclusion after discussions with the OCTO, the RTPD and the Office of the Chief Information Officer (OCIO), and comparing the CMS and instant requirements. *Id.* at 2. The contracting officer explained that while FTC would assist the OCTO with developing general strategies for migrating on-premises data centers to

the cloud, including support with checklists, procedures, and policies, it would not be involved in any decision-making as to which systems would be migrated or retired. *Id.* The contracting officer also explained that FTC would not be in a position to advise as to whether systems should be migrated or retired. *Id.* As such, FTC's work in analyzing the existing IT systems was limited only to assistance with the implementation of the migration process. *Id.* For that reason, the contracting officer concurred that there was no overlap in the scope of work encompassed by the CMS contract and the requirement here, and therefore, no conflict of interest. *Id.*

During the development process of the current protests, our Office requested additional information from the agency regarding the work that FTC actually performed on the CMS contract, as it was not readily apparent from our initial review that there was no overlap in requirements. GAO Req. for Add'l Briefing at 1. For example, the SOW on the CMS contract stated that the contractor would assist with assessing "the use of FEMA cloud security capabilities through evaluating legacy systems for migration to FedRAMP-approved Government cloud computing environments by FEMA [c]omponents, [r]egions, and system owners" and with "[a]pplication portfolio considerations" which would include "migration, modernization, [and] retirement." *Id.*; AR, Tab R, CMS SOW at 2, 4.

In response, the contracting officer explains that because of the very short, 5-month duration of the CMS contract, the cloud program management office elected to focus only on specific aspects of the requirement.<sup>6</sup> CO's Response to Req. for Add'l Briefing at 1-2. According to the agency, FTC only assisted with "documenting the major cloud program management processes and defining the roles and responsibilities for FEMA cloud team members"; "developing the content for the OCIO products and services guide"; and "analysis of related NIST [National Institute of Standards and Technology] standards for cloud environment and the development of implementation statements." *Id.* In the same vein, the contracting officer advised that FTC did not assist with evaluating legacy systems for migration to FedRAMP-approved government cloud computing environments, nor with application portfolio considerations, which would include migration, modernization, and retirement. *Id.* Importantly, FTC did not assess any specific systems for the purpose of potential migration to the cloud. *Id.*

In light of this explanation, we have no basis to question the agency's conclusion that the awardee does not have an impaired objectivity OCI. First, and most significantly, it does not appear that FTC was (or will be) actually able to manipulate the workflow or recommend that certain RTPD systems should be migrated to the cloud on the current call order. See CO's Response to Req. for Add'l Briefing at 1-2. While the broad objective of the CMS contract, in theory, could include advice on which of FEMA's IT systems should be migrated to the cloud, including those recovery IT systems in the RTPD, that aspect of the requirement was not executed on the CMS task order that ended in November 2021. Accordingly, we find that despite its prior work on the CMS

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<sup>6</sup> The agency explains that the period of performance on the CMS task order was three months (from May 28, 2021 to August 27, 2021), which was later extended until November 30, 2021. CO's Response to Req. for Add'l Briefing at 1-2.

contract, FTC was never in a position to influence the scope of the work, to favor its own performance, on the RTPD award.

Further, we note that the CMS contract ended on November 30, 2021. CO's Response to Req. for Add'l Briefing at 1-2. The initial term of the CMS contract was set to expire on August 27, 2021, but was later extended for another three months. *Id.* at 1. The contracting officer explains that "any data collection or assessments under the CMS task order were concluded prior to award of the RTPD BPA . . . on 9/7/2021." *Id.* at 2. Hence, in our view, even if we were to agree that FTC had an opportunity to opine on which RTPD systems should be migrated to the cloud, it was before it knew that its teammate Appddiction would be awarded the RTPD BPA.

In sum, we find that the protesters have not demonstrated that a conflict of interest exists here, nor that the agency's consideration of a potential conflict was unreasonable. *See, e.g., Bland & Associates, PC, B-419924, Sept. 28, 2021, 2021 CPD ¶ 332 at 7-8.* Accordingly, we deny this protest ground.

#### Phase 1 Evaluation

Both Excelicon and Trillion also contend that the agency improperly evaluated Appddiction's quotation under the demonstrated prior experience factor. Excelicon Protest at 11-12; Trillion Protest at 9-12. In addition, Excelicon protests FEMA's evaluation of its own quotation under that factor, arguing that it warranted a rating of high confidence. Excelicon Protest at 10-12. We address these allegations in turn.

#### Evaluation of Appddiction's Quotation

Both Excelicon and Trillion challenge the assignment of a rating of high confidence for Appddiction's demonstrated prior experience on the basis that the awardee has no previous experience with contracts of similar size, scope, and complexity as the current requirement. Excelicon Protest at 11-12; Trillion Protest at 9-12. Both protesters argue that Appddiction would have to rely exclusively on its subcontractor's experience to be able to perform, and has no prior experience with FEMA. *Id.* Excelicon also contends that Appddiction's reliance on subcontractors increases performance risk, which the agency failed to assess. Excelicon Protest at 12.

The agency responds that all past contract references identified by the awardee, either for the work it performed itself or with its major subcontractors, FTC and BDR, are directly relevant to the RTDP requirement, and are much more complex, larger in scope and with a higher dollar value than those identified by Excelicon or Trillion. Excelicon Memorandum of Law (MOL) at 24; Trillion MOL at 16. For example, FEMA points out that one of the prior experience references identified by Appddiction, for an \$862 million contract for IT services with the Department of Veterans Affairs, standing alone, was nearly sixteen times the size of Excelicon's combined prior experience, and three times the size of Trillion's combined prior experience. *Id.* FEMA also explains that the RFQ

here not only allowed consideration of subcontractor experience, but specifically encouraged vendors to provide prior experience references that involved teaming efforts with vendors' major subcontractors. Trillion MOL at 17.

As an initial matter, where, as here, an agency issues an RFQ to FSS vendors under FAR subpart 8.4 and conducts a competition for the issuance of an order or establishment of a BPA, we will review the record to ensure that the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable laws and regulations. *Digital Solutions, Inc.*, B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4; *DEI Consulting*, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. An agency has broad discretion when evaluating vendors' experience and past performance to determine whether a particular contract is relevant to an evaluation of experience. *Criterion Sys., Inc.*, B-416553, B-416553.2, Oct. 2, 2018, 2018 CPD ¶ 345 at 6. Our Office will examine an agency's evaluation of a vendor's experience only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit or relative relevance of a vendor's performance history is primarily a matter within the agency's discretion. *United Facility Servs. Corp d/b/a/ EASTCO Bldg. Servs.*, B-408749.2, Jan. 17, 2014, 2014 CPD ¶ 35 at 4.

As set forth above, the RFQ advised that FEMA would assess its confidence in vendors' successful performance of the requirement based on prior experience demonstrated through specific answers to six questions. RFQ at 62. The questions asked vendors to highlight their prior experience, including specific aspects of past work within the scope of the RTPD requirement. *Id.* at 52; see AR, Tab D, Appdiction Phase 1 Submission. Regarding major subcontractors, the solicitation encouraged vendors to identify prior experience references where subcontractors and prime contractors performed the work together. *Id.* at 54 (stating that examples where "[p]rime/[m]ajor [s]ubcontractor(s) can demonstrate prior experience performing/teaming together [are] desirable.").

Our Office has recognized that an agency may reasonably consider a subcontractor's capabilities and experience under relevant evaluation factors, where such consideration is not otherwise prohibited by the terms of the solicitation. *The Bowen Grp.*, B-409332.3, Aug. 6, 2014, 2014 CPD ¶ 236 at 5. Here, the RFQ contemplated that vendors could propose major or critical subcontractors, and explicitly provided that the agency would consider such teaming partners' demonstrated prior experience. RFQ at 54. As the solicitation did not prohibit consideration of a major subcontractor's experience and capabilities, we find that FEMA was permitted to consider the Appdiction team's collective experience and capabilities.

The record reveals that the Appdiction team identified prior experience references where the companies comprising the Appdiction team performed the requirement together. In fact, it appears that three out of five prior experience references identified in the awardee's quotation list FTC as the prime contractor, with Appdiction as the subcontractor, and two of them additionally list BDR as a subcontractor to FTC. AR, Tab D, Appdiction Phase 1 Submission at 3-4. In this context, because of the

demonstrated history of successfully working together as one team--the same team which will perform the current requirement--we reject Excelicon's contention that Appddiction's reliance on subcontractors increases the risk of unsuccessful performance. Excelicon Protest at 12.

Moreover, in our view, the agency's evaluation reasonably assessed the awardee's and its team's prior experience references, documenting the tasks that were directly relevant to the current work. These tasks included modernizing applications and monolithic systems to cloud-based environments, and familiarity with the Department of Homeland Security/FEMA/RTPD systems and the tools used by the agency. See Trillion AR, Tab G, Phase 1 Technical Evaluation Report (TER) at 15-16.

On this record, we have no basis to question the agency's evaluation of Appddiction's prior experience. Contrary to the protesters' allegations that the awardee has no relevant experience, the record demonstrates that Appddiction provided five relevant references of work it performed itself or as part of a team, which merited a rating of high confidence. Accordingly, we find the agency's evaluation reasonable, and deny this protest ground.

#### Evaluation of Excelicon's Quotation

For its part, Excelicon contends that the agency improperly disregarded portions of its quotation evaluated under the demonstrated prior experience factor, and unreasonably downgraded its rating to moderate confidence. Excelicon argues that its quotation warranted a rating of high confidence, rather than moderate confidence. Excelicon Protest at 10-12. Excelicon also alleges that FEMA's evaluation was unequal because Appddiction, which according to Excelicon did not have the demonstrated experience necessary to perform, was not held to the same stringent standard. *Id.*

The agency defends its evaluation, explaining that Excelicon identified five past experience references that "covered systems and applications which [were] much less complex in nature" and were "not at the same level of depth [as] expected for this BPA," meriting only a rating of moderate confidence. Excelicon COS ¶¶ 19-20; Excelicon MOL at 8, 20. The technical evaluation team assigned two weaknesses to Excelicon's quotation, for "not address[ing] modernizing a monolithic or complex system," and failing to "demonstrate sufficient experience addressing how to modernize a system while parts must reside in a legacy environment." Excelicon AR Tab I, Phase 1 TER at 9-10.

FEMA points to numerous instances where Excelicon's examples of past work fell short, noting that the protester failed to describe its experience with working on a monolithic system or application of similar complexity as the current NEMIS-IA order. Excelicon MOL at 8. In addition, the agency acknowledges that while Excelicon might "have demonstrated experience 'modernizing' smaller applications within their existing environments or helping move elements of legacy applications into a more modern cloud environment, the nature of the systems and applications Excelicon demonstrates experience with are less complex." *Id.* Moreover, FEMA notes that the protester's

“previous work with RTPD did not include performing system architecture, system design, and software development work with systems and applications of similar complexity.” *Id.* at 21.

As noted above, we examine an agency’s evaluation of a vendor’s experience only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit or relative relevance of a vendor’s performance history is primarily a matter within the agency’s discretion. *United Facility Servs. Corp d/b/a/ EASTCO Bldg. Servs., supra.* A protester’s disagreement with the agency’s judgment, without more, does not establish that an evaluation was unreasonable. *DEI Consulting, supra.*

While Excelicon disagrees with FEMA’s judgment, we have no basis to question the reasonableness of the agency’s evaluation conclusions, or the additional clarifications provided by the agency during the protest development process. For example, in its supplemental comments, Excelicon takes issue with FEMA’s explanation that the size or complexity of Excelicon’s past work “on monolithic and complex systems” was one of the factors justifying the rating of moderate confidence; the protester contends that vendors were not instructed to address the size or complexity of the system. Excelicon Supp. Comments at 4-5.

In our view, Excelicon’s contention here is without merit. We note that the RFQ instructed vendors to “provide information regarding [their] prior experience with contracts/orders of similar *size*, scope and *complexity* as RTPD BPA,” and the agency’s evaluation conclusions are reasonably encompassed within those overarching solicitation criteria. RFQ at 53 (emphasis added).

Additionally, as stated above, Excelicon also asserts the agency treated it unequally under the demonstrated prior experience factor. We have reviewed Excelicon’s assertions regarding allegedly unequal treatment under this factor and find no reason to agree with the protester. The protester largely complains that Appddiction did not have sufficient experience to perform the current requirement but its quotation nevertheless received a rating of high confidence. As noted above, we disagree with Excelicon here; we found the agency reasonably concluded that Appddiction’s team, including one of its subcontractors, FTC, demonstrated adequate prior experience.

Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between vendors’ quotations. *See, e.g., Abacus Tech. Corp.; SMS Data Prods. Grp., Inc., B-413421 et al., Oct. 28, 2016, 2016 CPD ¶ 317 at 11.* Here, the record readily demonstrates that material differences between Appddiction’s and Excelicon’s quotations supported the differing evaluation results. For that reason, Excelicon’s disparate treatment allegations are without merit, and provide no basis to sustain the protest.

## Phase 2 Evaluation

Next, Excelicon challenges FEMA's evaluation of its management, staffing/hiring, and technical approach, arguing that the agency unreasonably failed to assign strengths to its quotation, and impermissibly downgraded the quotation for lacking information that was included in its oral presentation. Excelicon Protest at 12-13. In addition, both protesters contend that FEMA failed to adequately document the content of the oral presentations.<sup>7</sup>

### Documentation Requirements

Both protesters argue that FEMA failed to document the record with respect to the content of oral presentations, and that our Office should sustain the protests because the record lacks an adequate basis on which to assess the agency's evaluation.

The agency acknowledges that it did not record the oral presentations, and that it advised the vendors during the oral presentation that their presentation slides would not be considered, and that the evaluation would be based solely on their responses to the government's questions. Excelicon COS ¶ 27. The agency also notes that its technical evaluation team was advised not to refer to the presentation slides in the evaluation, and instead only evaluate the content of vendors' oral presentations. *Id.* FEMA argues, however, that it "reasonably documented its evaluation judgments," and that a streamlined procurement process under FAR subpart 8.4 requires only minimal documentation. Trillion 2nd Supp. MOL at 20.

Our Office has stated that consistent with the objective of allowing for streamlined procurements under the FSS program, in the context of a FAR subpart 8.4 procurement, the agency's evaluation judgments must be documented in sufficient detail to show that they are reasonable. *See, e.g., Analytica, LLC*, B-418966, Nov. 9, 2020, 2020 CPD ¶ 365 at 7. At the same time, we have found that apart from documenting evaluation judgments, subpart 8.4 does not expressly require an agency to record or otherwise transcribe the content of the vendors' oral presentation. *Id.*; *cf. Checchi and Co. Consulting, Inc.*, B-285777, Oct. 10, 2000, 2001 CPD ¶ 132 (in procurements conducted under FAR part 15, agencies are required to maintain a record of oral presentations, which can include retaining government notes, copies of offeror briefing slides or presentation notes).

Our review of the record here shows sufficient--albeit sparse--documentation of the agency's evaluation conclusions about vendors' oral presentations. The technical evaluation report documents particular aspects of vendors' management, staffing/hiring,

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<sup>7</sup> Trillion also challenges the evaluation of Appddiction's quotation under this factor, arguing that it was unreasonable and unequal, and did not warrant a rating of high confidence. Trillion Protest at 12-14. In addition, Trillion complains about a weakness assigned to its quotation for proposing 25 key personnel. Trillion Supp. Protest at 8-9. We have reviewed Trillion's allegations and although we do not discuss them here, we find that none provides a basis upon which to sustain the protest.

and technical approach explained in the presentations and which of those aspects, the evaluators concluded, merited strengths or weaknesses. See Excelicon AR, Tab J, Phase 2 TER; Trillion AR, Tab H, Phase 2 TER. There is no further requirement in law or regulation that mandates documenting oral presentations in procurements conducted under FAR subpart 8.4, and it is not our role to impose one where the FAR does not. See *Analytica, LLC, supra*.

### Evaluation of Excelicon

Turning to the substance of the agency's phase 2 oral presentation evaluation under the management, staffing/hiring, and technical approach factor, Excelicon argues that the agency unreasonably failed to assign strengths to its approach, and challenges several of the assigned weaknesses. Excelicon Protest 12-14; Excelicon Comments and Supp. Protest 9-11. We have reviewed the underlying record and have no basis to question the agency's evaluation conclusions here. While Excelicon makes a number of arguments in its submissions, we discuss one representative example below.

Excelicon protests the agency's finding that its approach "appeared to be more focused on modernization and did not sufficiently address how [Excelicon] would support FEMA's existing systems." *Id.* at 10; Excelicon AR, Tab J, Phase 2 TER at 6. Notably, Excelicon does not assert that this statement is incorrect; instead, the protester acknowledges that its oral presentation was focused on modernization because FEMA's phase 2 "questions to which the offerors were required to respond" were focused on modernization. Excelicon Comments and Supp. Protest at 10. Hence, according to the protester, Excelicon was only following the agency's overall direction when choosing the content of its oral presentation.

We see no merit in the protester's explanation. First, we think that the protester misconstrues the basis for FEMA's evaluation: the solicitation did not limit the scope of oral presentations to the issues raised in the agency's written questions provided to the vendors in advance. Second, we note that the overall scope of the RTPD requirement here was for modernization and sustainment of the RTPD legacy systems. RTPD BPA SOW at 8. Accordingly, vendors should have reasonably anticipated that their oral presentations should have included discussion of both their proposed technical approach to modernization, and sustainment of RTPD legacy systems.

After our review of examples provided by Excelicon regarding the allegedly improper evaluation of its oral presentation, we find that the protester has not persuasively refuted the reasonableness of the evaluation findings.

### Evaluation of Price

Additionally, Trillion challenges the agency's evaluation of the awardee's price. Trillion Protest at 15-16. While styled as a part of the protest ground related to the best-value tradeoff determination, the protester contends that FEMA failed to evaluate the price

“reasonableness of [Appddiction’s] proposed resources and the level of effort,” *i.e.*, whether the awardee “could perform . . . the . . . work with both the proposed labor categories and the labor rates for each of those categories.” *Id.* at 16 (citing FAR 15.404-1(e)). Trillion also alleges that the agency did not assess the level of effort and the mix of labor proposed to determine whether Appddiction’s price was reasonable, in violation of FAR subpart 8.4. Trillion Supp. Protest at 1-3 (citing FAR 8.405-3(b)(2)(vi)); Trillion Comments and 2nd Supp. Protest at 21-23 (citing FAR 8.405-2(d)).

The agency responds that it properly evaluated all four price quotations and based on an adequate price competition, found all of the prices fair and reasonable. Trillion MOL at 21; AR, Tab I, SSD at 2; AR, Tab S, Phase 2 Business Report at 23. FEMA explains that the contracting officer properly considered the level of effort and the mix of labor proposed by Appddiction, in accordance with FAR section 8.405-2(d), and properly concluded that Appddiction’s price was reasonable. Trillion Supp. MOL at 17-18; AR, Tab I, SSD at 2-3. The agency also points out that while the RFQ instructed that “technical analysis” in accordance with FAR section 15.404-1(e) might be used to evaluate price reasonableness, such an analysis was not required.<sup>8</sup> Trillion MOL at 21.

We have reviewed the record, and find that the protester has not shown that this aspect of the evaluation was flawed. To the extent Trillion alleges that a proper tradeoff analysis would have revealed that “the proposed resources and level of effort” proposed by Appddiction were “insufficient to perform all of the requirements,” *i.e.*, the quoted prices were too low, which is an allegation that the agency failed to perform a price realism analysis, we note that the RFQ did not provide for a price realism evaluation. *Id.* at 16; RFQ at 63. As such, the protester fails to provide a valid basis of protest. 4 C.F.R. §§ 21.1(c)(4) and (f) (a protest must include a detailed statement of the legal and factual grounds for the protest, and the grounds stated must be legally sufficient).

Moreover, we agree with FEMA that the solicitation here did not require use of additional methods to evaluate price reasonableness, as long as adequate competition had been achieved. RFQ at 63. The RFQ only indicated that the agency might employ additional price analysis techniques, at the government’s “sole discretion,” which included conducting the technical analysis under FAR section 15.404-1(e). *Id.* Accordingly, Trillion’s assertion that such an evaluation was required is also legally insufficient, and we dismiss it. 4 C.F.R. §§ 21.1(c)(4) and (f).

Instead, as set forth above, the RFQ stated that the agency would evaluate prices for reasonableness “through comparison with other proposed prices.” RFQ at 63. When agencies conduct competitions for the issuance of orders or BPAs under the FSS, FAR subpart 8.4 requires agencies to evaluate “the level of effort and the mix of labor proposed to perform a specific task being ordered, and for determining that the total price is reasonable.” *U.S. Info. Techs. Corp.*, B-404357, B-404357.2, Feb. 2, 2011,

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<sup>8</sup> The RFQ stated that although an “[a]dequate price competition is anticipated,” the agency might use “technical analysis” in accordance with FAR section 15.404-1(e), to evaluate price, including a review of the technical approach proposed by a vendor, “in comparison to the total proposed staffing mix, level of effort, and materials.” RFQ at 63.

2011 CPD ¶ 74 at 6-7 (citing FAR 8.405-2(d)). In this respect, the RFQ required vendors to quote prices for each contract line item number (CLIN) in the first BPA order: a base and four option CLINs, each of which was for 1 year of performance, and to provide labor rates and numbers of hours that make up the fixed prices. RFQ at 63; RFQ att. 3, RTPD BPA NEMIS IA Price Template. Vendors had to quote labor categories from their FSS schedules, and identify the labor rates and hours proposed for each of the CLINs. *Id.* The RFQ also stated that the agency would consider whether vendors' quoted labor categories and skill mix, as proposed in attachment 3, are adequate to successfully perform the requirement. *Id.* at 62.

The protester relies on *U.S. Info. Techs. Corp., supra*, for the proposition that the agency's evaluation has not sufficiently addressed the requirements of FAR section 8.405-2(d); that is, that the evaluation failed to properly consider the level of effort and the mix of labor proposed to reach the conclusion that the price quoted by Appddiction was reasonable. But the record shows that in contrast to *U.S. Info. Techs. Corp.*, which our Office sustained and where vendors had to provide "detailed pricing information, labor hours, and labor mix for each [performance work statement] task and [] demonstrate the relationship between their pricing structure and their technical approach," the RFQ here did not require vendors to provide detailed mapping of labor mix to specific skill mix. *Compare US Info. Techs. Corp., supra* at 7, with RFQ at 63; RFQ att. 3, RTPD BPA NEMIS IA Price Template. Instead, as noted above, the solicitation only required that vendors quote labor categories from their FSS schedules, and identify the labor rates and hours for each CLIN in the first BPA order. RFQ at 63; RFQ att. 3, RTPD BPA NEMIS IA Price Template.

Under the circumstances here, we have no basis to question the agency's overall consideration of Appddiction's quoted labor categories, skill mix, labor rates, and proposed level of effort for each CLIN. See Trillion AR, Tab S, Phase 2 Business Report at 19-23. We also have no basis to question the agency's ultimate conclusion that Appddiction's "approach for completing all tasks" with the workforce it proposed merits a conclusion that its price is reasonable. Trillion AR, Tab H, Phase 2 TER at 8; AR, Tab I, SSD at 2-3 (SSA concluding that Appddiction "understand[s] the Government's requirements and would be successful in performing the resultant BPA and call order awards."). Accordingly, this protest ground is denied.

#### Limitations on Subcontracting

The protesters further contend that Appddiction's quotation clearly set forth an intent not to comply with applicable limitations on subcontracting.<sup>9</sup> Excelicon Comments and Supp. Protest at 11-13; Trillion Supp. Protest at 7-8. Relevant here, FAR clause 52.219-14, Limitations on Subcontracting, provides that "[a]t least 50 percent of the cost

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<sup>9</sup> This BPA was established under a GSA FSS contract; accordingly, the terms of each vendor's FSS contract apply to the BPA. Appddiction's GSA schedule contract incorporates FAR clause 52.219-14 (MAR 2020). Excelicon AR, Tab O, RTPD BPA at 1.

of contract performance incurred for personnel shall be expended for employees of the concern.” FAR 52.219-14 (MAR 2020).

According to the protesters, Appddiction will be unable to comply with this clause due to its proposed use of two major subcontractors, FTC and BDR, who will, pursuant to the solicitation’s definition of major subcontractor, each perform “at least 25% of the requirement (in dollars) relevant to the prospective NEMIS IA call order.” Excelicon Comments and Supp. Protest at 12; Excelicon AR, Tab D, Appddiction Phase 1 Submission at 3; RFQ at 53.

In response, FEMA first contends that the protesters have failed to meet their burden to show that Appddiction’s quotation took exception to the applicable limitations on subcontracting. Excelicon Supp. MOL at 11; Trillion Supp. MOL at 25-26. The agency also counters that one of the proposed subcontractors, BDR, is an 8(a) certified small business concern and as such, the work to be performed by that company does not count against the subcontracting limitation. *Id.* at 12. In support, FEMA cites 13 C.F.R. § 125.6(a)(1), which states in pertinent part that “[i]n the case of a contract for services (except construction), [a small business must agree that] it will not pay more than 50% of the amount paid by the government to it to firms that are not similarly situated.” *Id.*

FEMA also maintains that our Office has previously recognized the principle articulated in 13 C.F.R. § 125.6(a)(1) in *Sealift, Inc.*, B-409001, Jan. 6, 2014, 2014 CPD ¶ 22. In *Sealift, Inc.*, we denied a protest challenging an agency’s determination that the awardee complied with the limitations on subcontracting where the awardee proposed to subcontract work to another small business concern, *i.e.*, a similarly situated entity. *Sealift, Inc.*, *supra* at 4-5. In reaching this conclusion, we reasoned that costs incurred by such a small business subcontractor would not be considered subcontracted for purposes of the limitation on subcontracting. *Id.* at 5 n.4.

After reviewing the agency report responding to these allegations, Excelicon asserts that FEMA should have recognized that Appddiction did not agree to comply with the subcontracting limitation because Appddiction’s teaming agreement with FTC described “a division of responsibilities covering work to be performed by the team” that guaranteed FTC no less than 35 percent of the labor workshare on the contract; at the same time, BDR was guaranteed no more than 35 percent of the labor workshare. Excelicon Supp. Comments at 10. Excelicon further argues that because of this division of labor under the teaming agreement, and in light of both FTC and BDR being major subcontractors, it should have been clear to the agency that BDR would perform between 25 percent to 35 percent of the labor on the contract, while FTC would perform no less than 35 percent of the labor on the contract. *Id.* Accordingly, Excelicon contends that at most, Appddiction could perform 40 percent of the work under the RFQ, in clear violation of the limitations on subcontracting clause. *Id.* at 11.

As discussed below, we find that the protesters have not shown that Appddiction’s quotation, on its face, took exception to the applicable limitation on subcontracting or indicated an intent not to comply with that requirement.

As a general matter, an agency's judgment as to whether a small business will comply with the limitations on subcontracting clause is a matter of responsibility, and the contractor's actual compliance is a matter of contract administration, both of which are not subject to our review. *SumCo Eco-Contracting LLC*, B-409434, B-409434.2, Apr. 15, 2014, 2014 CPD ¶ 129 at 3; 4 C.F.R. § 21.5(a), (c). However, where a quotation, on its face, should lead an agency to conclude that a vendor has not agreed to comply with the subcontracting limitation, the matter becomes one of acceptability, which our Office will review. *DBI Waste Sys., Inc.*, B-408304, B-408304.2, Aug. 5, 2013, 2013 CPD ¶ 188 at 5.

A vendor, however, need not affirmatively demonstrate compliance with the subcontracting limitations in its quotation. See *Dorado Servs., Inc.*, B-408075, B-408075.2, June 14, 2013, 2013 CPD ¶ 161 at 12. Rather, such compliance is presumed, unless specifically negated by other language in the quotation. See *Express Med. Transporters, Inc.*, B-412692, Apr. 20, 2016, 2016 CPD ¶ 108 at 6. Accordingly, where a vendor submits a quotation in response to an RFQ that incorporates FAR clause 52.219-14, the vendor agrees to comply with the limitation, and in the absence of any contradictory language, the agency may presume that the vendor agrees to comply with the subcontracting limitations. *Id.* Instead, it is the protester who bears the burden of demonstrating that the quotation should have led the agency to conclude that the vendor would not comply with this limitation. See *KAES Enters., LLC*, B-408366, Aug. 7, 2013, 2013 CPD ¶ 192 at 3.

In our view, there is no basis to question the agency's conclusion that the awardee would comply with the subcontracting limitation. Here, there is no dispute that FAR clause 52.219-14 applied to the solicitation. Thus, when Appddiction submitted its quotation, there was a presumption that the firm agreed to comply with the subcontracting limitation. Additionally, based on our review of the record, there is nothing on the face of Appddiction's quotation affirmatively taking exception to the subcontracting limitations or demonstrating that the firm has no intention to comply with the limitations.

While the protesters set forth, based on their review of Appddiction's quotation, their rationale for why Appddiction will be unable to comply with the limitations on subcontracting, we do not find their assertions convincing. A protester's mere assumptions, inferences, and speculation are generally insufficient to demonstrate noncompliance with subcontracting limitations. See *Dorado Serv., Inc.*, *supra* at 12. Indeed, overcoming the presumption of compliance is challenging in cases where the protester does not have the benefit of information indicating the anticipated cost of contract performance incurred for personnel. See *Express Medical Transporters, Inc.*, B-412692, Apr. 20, 2016, 2016 CPD ¶ 108.

Here, there was no such cost information on the face of Appddiction's quotation to indicate that Appddiction would not comply with the subcontracting limitation requirement. In other words, the protesters are not privy to all the cost elements in the awardee's quotation that could bear on the awardee's compliance with the limitations on subcontracting, for example, future profit or general & administrative expenses. See,

e.g., *Mechanical Equip. Co., Inc. et al.*, B-292789.2 *et al.*, Dec. 15, 2003, 2004 CPD ¶ 192 (discussing how the Small Business Administration (SBA) determines compliance with the limitations on subcontracting, and what costs should be included in the calculation); see also *Excel Mfg., Ltd. v. United States*, 111 Fed. Cl. 800 (2013) (refusing to invalidate a contract award where the protester's allegations regarding the awardee's future violations of the limitations on subcontracting are based on conjecture). In the end, we find that the protesters have not met their burden of proof for this issue.

Moreover, we are not persuaded by the protesters' arguments inviting a departure from our reasoning in *Sealift*, where we rejected similar arguments regarding the alleged noncompliance of two small business concerns performing the requirement. While the protesters generally disagree with our *Sealift* decision and contend that the present case is nevertheless distinguishable, we are not convinced the circumstances here warrant a different analysis or result.<sup>10</sup> Consequently, this protest ground is denied.

### Best-Value Determination

Finally, the protesters challenge the agency's best-value determination. Excelicon claims it was based on a flawed evaluation, and that FEMA failed to meaningfully consider cost or price to the government in making its source selection decision. Excelicon Protest at 13-14. Trillion, for its part, complains that the SSA failed to meaningfully identify whether Appdiction's or Trillion's quotation could better satisfy the agency's needs. Trillion Comments and 2nd Supp. Protest at 21-23.

First, because we find the agency's evaluation of quotations unobjectionable, we have no basis to question the agency's best-value decision. *CW Gov't Travel, Inc.*, B-416091, B-416091.2, June 13, 2018, 2018 CPD ¶ 225 at 11. Further, regarding the price consideration, as discussed above, we found it unobjectionable.

Last, although Trillion complains that the SSA did not meaningfully consider the underlying merits of the quotations, including which vendor could best satisfy the agency's needs, the agency's source selection decision demonstrates that the SSA reviewed the "non-price factor" ratings and "the consensus evaluation findings" and

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<sup>10</sup> As the agency points out, FAR clause 52.219-14 (MAR 2020) was recently amended to explicitly exclude work performed by "similarly situated entities" from the calculation. See 83 Fed. Reg. 62540, 62541 (Dec. 4, 2018) (proposed rule); 86 Fed. Reg. 44233 (Aug. 11, 2021) (final rule). This change aligns with long-standing SBA regulations, including 13 C.F.R. § 125.6, that implemented the amendments to the Small Business Act enacted in the Fiscal Year (FY) 2013 National Defense Authorization Act (NDAA). See 81 Fed. Reg. 34243 (May 31, 2016) (SBA's final rule implementing the statutory requirements of section 1651 of the NDAA for FY 2013 (15 U.S.C. § 657s)). As noted above, our Office has recognized that subcontracts to similarly situated entities were excluded by statute from the calculation, well before the FAR Council adopted FAR 52.219-14 (SEP 2021). See *Sealift*, *supra* at 5 n.4; Excelicon Supp. MOL at 14 n.1.

considered the qualitative value of Appddiction's and Trillion's quotations. Trillion AR, Tab I SSD at 2-3. Based on this review and consideration, the record shows that the SSA reasonably concluded that both quotations were technically equal. *Id.* at 3.

After concluding that the two quotations were technically equal, the SSA noted that in accordance with the terms of the RFQ, "price becomes the determining factor between these two technically equal quot[at]ions." *Id.* Subsequently, the SSA reasonably determined that "based on my integrated assessment of all quotes in accordance with the specified evaluation factors, including the order of importance for those factors," Appddiction's lower-priced quotation represented the best value to the government. *Id.* On this record, we see no basis to question the agency's decision to establish the BPA with, and issue the first call order to, Appddiction.

The protests are denied.

Edda Emmanuelli Perez  
General Counsel