Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

THE OFFICE OF REFUGEE RESETTLEMENT DID NOT AWARD AND MANAGE THE HOMESTEAD INFLUX CARE FACILITY CONTRACTS IN ACCORDANCE WITH FEDERAL REQUIREMENTS

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A-12-20-20001

Office of Inspector General

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Report in Brief
Date: December 2020
Report No. A-12-20-20001

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL

The Office of Refugee Resettlement Did Not Award and Manage the Homestead Influx Care Facility Contracts in Accordance With Federal Requirements

Why OIG Did This Audit

The Office of Refugee Resettlement (ORR), a program office of the Administration for Children and Families (ACF) within HHS, manages the Unaccompanied Alien Children Program. ORR funds a network of about 195 facilities. ORR also operates influx care facilities to provide temporary emergency shelter and services for children. ORR contracted with Comprehensive Health Service, LLC (CHS), a medical management services provider, to operate a temporary influx care facility located in Homestead, Florida. Some members of Congress have expressed concerns about ORR's awarding of a $341 million sole source contract to CHS.

Our objectives were to determine whether ORR: (1) awarded a $341 million sole source contract to CHS in accordance with Federal statutes, regulations, and HHS policies and procedures, and (2) managed its four contracts for services to provide influx care at the Homestead influx care facility (Homestead) during our audit period in accordance with Federal statutes, regulations, and HHS policies and procedures.

How OIG Did This Audit

Our audit included the review of ORR's awarding of a sole source contract to CHS with a ceiling value of $341,124,733, as well as the review of contracts for the three other Homestead service providers. We reviewed invoices from the three contractors that provided services at Homestead during the audit period.

What OIG Found

ORR did not award a $341 million sole source contract to CHS in accordance with Federal regulations and did not effectively manage its HHS contracts for services provided at Homestead in accordance with Federal statutes, regulations, and HHS policies and procedures. Because ORR did not follow Federal regulations or effectively manage its contracts for services provided at Homestead, it: (1) did not receive the benefit of a full and open competition, such as potentially receiving higher quality services or services at a lower cost when it awarded a sole source letter contract to CHS; (2) paid approximately $67 million to operate Homestead fully staffed and equipped for nearly 3 months after the last child left Homestead; (3) increased the risk of approving invoices that were incorrect or for services not performed; and (4) made approximately $2.6 million in overpayments to CHS.

What OIG Recommends and Agency Comments

We made several recommendations to ORR, including that it: (1) develop plans for upcoming service needs by using all available data and indicators to ensure that it adheres to Federal requirements and (2) recoup the $2,581,157 overpayment of fixed fees from CHS. We also made several other recommendations related to establishing policies and procedures to better protect Federal funds and manage its contracts in accordance with Federal statutes, regulations, and HHS policies and procedures.

In written comments on our draft report, ACF, commenting on behalf of ORR, concurred with five of our six recommendations and described the actions it has taken or plans to take to address them. For example, ACF stated that the recently created Office of Government Contracting Services (GCS) and ORR began discussions in September 2020 regarding ORR's new requirement for influx care operations and services. Specifically, GCS established standard operating procedures for reviews at multiple acquisition and procurement lifecycle stages to include acquisition strategy, presolicitation, and contract reviews. ACF did not indicate concurrence or nonconcurrence with our final recommendation to recoup the $2,581,157 overpayment of fixed fees from CHS, instead stating that if PSC determined an overpayment was made, it would work with PSC to recoup the overpayment. Finally, ACF stated that ORR did not agree with the conclusion in our first finding that ORR did not comply with the Federal Acquisition Regulation. We disagree with this and maintain that our findings and recommendations are valid.

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INTRODUCTION

WHY WE DID THIS AUDIT

The Office of Refugee Resettlement (ORR), a program office of the Administration for Children and Families (ACF) within the Department of Health and Human Services (HHS), manages the Unaccompanied Alien Children (UAC) Program. ORR funds a network of about 195 State-licensed provider care facilities (care facilities) for children in its custody through cooperative agreements and contracts. ORR also operates influx care facilities to provide temporary emergency shelter and services for children. Influx care facilities may be opened on federally owned or leased properties, in which case the facility may not be subject to State or local licensing standards. ORR contracted with Comprehensive Health Service, LLC (CHS), a medical management services provider, to operate a temporary influx care facility located in Homestead, Florida. Some members of Congress have expressed concerns about ORR's awarding of a $341 million sole source contract to CHS to provide services at the Homestead[1] influx care facility (Homestead), which has also generated media coverage.

OBJECTIVES

Our objectives were to determine whether ORR: (1) awarded a $341 million sole source contract to CHS in accordance with Federal statutes, regulations, and HHS policies and procedures, and (2) managed its four contracts for services to provide influx care at Homestead during our audit period in accordance with Federal statutes, regulations, and HHS policies and procedures.

BACKGROUND

The UAC Program serves children who arrive in the United States unaccompanied and children who are separated from their parents or legal guardians by immigration authorities. Federal law requires the safe and timely placement of children in the least restrictive setting that is in the best interest of the child. Care facilities provide temporary care including housing, food, medical care, mental health services, recreational activities, and educational services for children until they are released to a sponsor or otherwise leave ORR custody. The children await release to an appropriate sponsor (when possible) and judicial resolution of their immigration status.

At times, ORR experiences surges in the numbers of migrant children coming into the United States. During such an "influx," ORR enters into agreements with temporary emergency care providers to operate facilities, called "influx care facilities," to provide shelter and services. Although unaccompanied children are in the legal custody of HHS throughout their stay in ORR care, they are in the physical custody of the care provider.

[1] Homestead was renamed to Biscayne Influx Care Facility in February 2020.

Overview of the Contracting Process

The Federal Acquisition Regulation (FAR) guides the acquisition process by which executive agencies of the Federal Government use appropriated funds to contract for goods and services. The HHS Acquisition Regulation (HHSAR) established uniform HHS policies and procedures that implement and supplement the FAR.

ORR used the contract authority of the Program Support Center (PSC)[2] to award and administer contracts on its behalf to operate Homestead. The acquisition process begins when ORR identifies a need for a service and makes a contracting request to PSC. PSC then decides which type of contract to use for the services. The contracting officer's representative (COR)[3] creates a statement of work (SOW) to define the services to be provided. The COR sends the SOW to the eligible contractors, which use it to prepare cost proposals. After an evaluation, a contractor is selected, and a contract is awarded by PSC. The contractors submit invoices monthly, and the COR certifies the invoices and submits them to PSC for payment.

Types of Contracts

The FAR groups contracts into types, including fixed-price contracts, cost reimbursement contracts, and time-and-material contracts (FAR part 16, Types of Contracts). When an agency does not know the exact times or exact quantities of future deliverables at the time the contract is awarded, it may use an indefinite-delivery, indefinite-quantity (IDIQ) contract for services and supplies. An IDIQ contract provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period and may also specify maximum or minimum quantities that the agency may order under each "task order contract" (services) or "delivery order contract" (supplies) and the maximum quantity that it may order during a specific period of time (FAR § 16.504). Under IDIQ contracts, contractors that are determined to be technically capable of providing the services may be awarded the contracts. The task orders are bid among eligible IDIQ contract holders. The task orders we audited were all awarded under IDIQ contracts as time-and-material contracts, which allow for the reimbursement of certain labor categories by the number of hours worked and the cost of materials directly associated with contract performance (FAR § 16.601).

[2] PSC, a multifunction shared service provider within HHS, provides support services (e.g., acquisition planning; soliciting and assessing offers; and negotiating, awarding, administering, and closing-out Government contracts) so that supported agencies can focus on their core missions. PSC provides these comprehensive services through their trained and certified acquisition personnel.

[3] PSC designates the COR who is an ORR employee.

An agency would use a "definitive contract" when the entirety of the requirements has been established at time of contract award.[4] When negotiating a definitive contract is not possible in sufficient time to meet an identified requirement and the agency's interests demand that the contractor be given a binding commitment so that work can start immediately, it may use a "letter contract" to procure supplies or services. A letter contract is a written preliminary contract that authorizes the contractor to begin immediately manufacturing supplies or performing services. A letter contract may be used only after the head of the contracting activity or a designee determines in writing that no other contract is suitable. A letter contract cannot be awarded without competition when competition is required by the FAR (FAR § 16.603).

Contracts for Services at the Homestead Influx Care Facility

PSC awarded a sole source letter contract on behalf of ORR to CHS to provide support services for unaccompanied children, including education, food, recreational activities, security, routine medical care, and case management services.[5] ORR also procured[6] additional services for Homestead through three IDIQ contracts with three contractors: (1) General Dynamics Information Technology, Inc. (GDIT), (2) Brookstone Emergency Services (Brookstone), and (3) Southwest Key Programs, Inc. (SWK). PSC issued multiple task orders to the three IDIQ contract holders during our audit period. ORR used GDIT to provide staff training and used Brookstone to provide wraparound and facility management services at the facility when children were present and during the period of "warm status."[7] ORR contracted with SWK for transportation services, but SWK did not perform services during our audit period.

[4] The term "definitive contract" is used throughout FAR subpart 16.603, Letter Contracts. The term is not defined for part 16; however, the language in FAR subpart 16.603 clearly makes a distinction between "letter contracts" (an agreement with undefined terms) and a "definitive contract" (a complete agreement with finalized terms).

[5] PSC awarded IDIQ contracts to CHS in 2015 and 2017 to provide services at Homestead.

[6] Although PSC technically awarded the contracts at issue, we identify ORR as the awarding and administering agency throughout the remainder of the report because ORR funds and oversees care facilities' operations and is the originating entity for identifying a contracting need for the UAC program.

[7] ORR uses the term "warm status" when a facility is not fully staffed and there are only minimal onsite facility management services, such as payment of utilities, infrastructure repairs, fence, landscaping, storm damage preparation, and mosquito abatement services. Warm status costs are lower than the costs of operating an influx care facility that receives and cares for unaccompanied children.

Table: Contracts for the Homestead Influx Care Facility

Contractor	Type of Service	Award Date	Ceiling Value	Awarded/Obligated	Costs Incurred
CHS	Shelter and Medical	4/9/2019	$341,124,733	$214,594,852	$174,980,144
Brookstone	Facility Management	12/22/2018	$64,032,509	$64,032,509	$39,933,512
GDIT	Staff Training	4/22/2019	$1,896,606	$1,429,026	$917,320
SWK	Transportation	6/20/2019	$6,943,970	$6,943,970*	$0
Total:			**$413,997,818**	**$287,000,357**	**$215,830,976**

* Although this amount was obligated to SWK, we inquired with ORR officials and they confirmed that SWK did not perform services or submit invoices during our audit period.

HOW WE CONDUCTED THIS AUDIT

We reviewed ORR's award of a sole source contract to CHS with an original ceiling value of $341,124,733. We also reviewed ORR's management of the sole source contract and three other contracts to provide services at Homestead. In addition, we reviewed invoices and documentation from the three contractors that provided services at Homestead and submitted invoices during the audit period. We selected a nonstatistical sample of 10 labor transactions involving CHS employees totaling $59,756 and 10 labor transactions involving CHS subcontractor employees totaling $20,757 that included all job types such as youth care workers, case managers, and clinical counselors.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A describes our audit scope and methodology, and Appendix B contains a summary of Homestead contracts and amendments.

FINDINGS

ORR did not award a $341 million sole source contract to CHS in accordance with Federal regulations and did not effectively manage its HHS contracts for services provided at Homestead in accordance with Federal statutes, regulations, and HHS policies and procedures. Specifically, ORR did not:

- comply with the FAR when it awarded a sole source letter contract to CHS and
- effectively manage its HHS contracts by:

- establishing control activities to place Homestead into warm status to protect public funds,

- designating and authorizing a COR for the letter contract with CHS,

- complying with FAR requirements on letter contract definitization, and

- establishing policies and procedures for invoice review.

ORR did not comply with the FAR or effectively manage its four HHS contracts because ORR officials: (1) lacked the advanced planning needed to comply with the FAR, (2) relied on informal management decisions rather than formal policies and procedures to determine whether to move Homestead into a warm status, (3) lacked policies and procedures related to designating a COR and reviewing invoices, and (4) did not monitor the performance of the contract to ensure that PSC promptly identified and appointed a replacement contracting officer to definitize[8] the letter contract in an expeditious manner.

Because ORR did not follow Federal regulations or effectively manage its contracts for services provided at Homestead, it: (1) did not receive the benefit of a full and open competition, such as potentially receiving higher quality services or services at a lower cost, when it awarded a sole source letter contract to CHS; (2) paid approximately $67 million to operate Homestead fully staffed and equipped for nearly 3 months after the last child was transferred from Homestead; (3) increased the risk of approving invoices that were incorrect or for services not performed; and (4) made approximately $2.6 million in overpayments to CHS.

ORR DID NOT COMPLY WITH THE FEDERAL ACQUISITION REGULATION WHEN THE SOLE SOURCE LETTER CONTRACT WAS AWARDED TO CHS

Federal Requirements

With certain limitations, contracting officers must promote and provide for full and open competition in soliciting offers and awarding Government contracts (FAR § 6.101(a), 10 U.S.C. § 2304, and 41 U.S.C. § 3301 subpart 6.2 and 6.3).

When an agency's need for supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals, full and open competition need not be provided for (FAR § 6.302-2(a)(2)).

Contracting without providing for full and open competition cannot be justified on the basis of a lack of advance planning by the requiring activity (FAR § 6.301(c)(1)).

[8] Contract definitization is the process of negotiating the terms of an agreement to create a definitive contract (FAR § 52.216-25(a)).

ORR Did Not Plan for a Full and Open Competition

In its Justification and Approval for Other Than Full and Open Competition (JOFOC), ORR cited an "unusual and compelling urgency."[9] The JOFOC stated a full and open competition to satisfy ORR's need to increase bed capacity at Homestead was not a viable option because the timeline associated with the competitive process made it impossible for ORR to increase its bed capacity by the required date of April 11, 2019, which was only 9 days prior to the expiration of CHS's original task order. Specifically, ORR officials told us that they would have needed 60 to 90 days to complete a solicitation process and another 60 to 90 days to transition to a new contractor to operate Homestead if it did not select CHS. Therefore, to properly plan in advance for a full and open competition, ORR would have needed to begin the process in fall 2018 to evaluate whether it would need to use Homestead in spring 2019 and potentially initiate a new contract competition. Because ORR did not plan in advance for the continued need for influx care that it should have anticipated, it fostered a situation that created an "unusual and compelling urgency" for awarding a sole source letter contract to CHS.

ORR claimed in the JOFOC that it "promotes full and open competition when feasible, but the contract to provide services at Homestead is unpredictable due to its spontaneity." ORR listed several causes for the unusual and compelling need for a sole source letter contract, including increases in referrals, decreases in discharges, enhanced background check policies for the sponsors of unaccompanied children, and the decision to prosecute all illegal border crossings.[10] However, as discussed below, ORR did not use all available data in fall 2018 to determine whether it would continue to need Homestead after the existing task order was set to end. On the basis of our review of ORR's data metrics (provided to us in dashboard and

[9] ORR included in the JOFOC a discussion as to why it was determined that no other contract vehicle was suitable, as required by FAR § 16.603-3: "After considering all acquisition options, [ORR] determined that the only way to address the immediate need for increased bed capacity was to award a letter contract in accordance with FAR 16.603." We note that agency contracting officers ordinarily have wide discretion in exercising procurement authorities under the FAR—this authority being limited solely by express prohibitions and the necessity that such discretion be exercised reasonably. Here, we do not take issue with the assigned contracting officer's authority to properly award a contract under "other than full and open competition," but the facts and circumstances that placed the contracting officer into a position in which that action was needed to meet ORR's continuing mission requirements. At the time the JOFOC was submitted, an unusual and compelling situation had arisen based solely upon ORR's inaction. Because of ORR's failure to reasonably conduct the necessary advanced planning for the follow-on contract, there was insufficient time to properly compete a contract, leading to the need to award the noncompetitive letter contract. Although the contracting officer took the proper steps necessary to draft and approve a JOFOC under the FAR, that does not negate the fact that ORR's failure to conduct advanced planning placed it into this situation that required the noncompetitive award under urgent and compelling circumstances that we take issue with here.

[10] On May 7, 2018, the Attorney General announced the joint Department of Justice and Department of Homeland Security (DHS) implementation of the zero-tolerance policy, which stated that DHS would refer all illegal southwest border crossings for prosecution (*Communication and Management Challenges Impeded HHS's Response to the Zero-Tolerance Policy,* OEI-BL-18-00510 (March 2020)).

situational reports),[11] we identified the following three indicators that were available to ORR officials in fall 2018 that indicate the continued need for influx care was predictable:

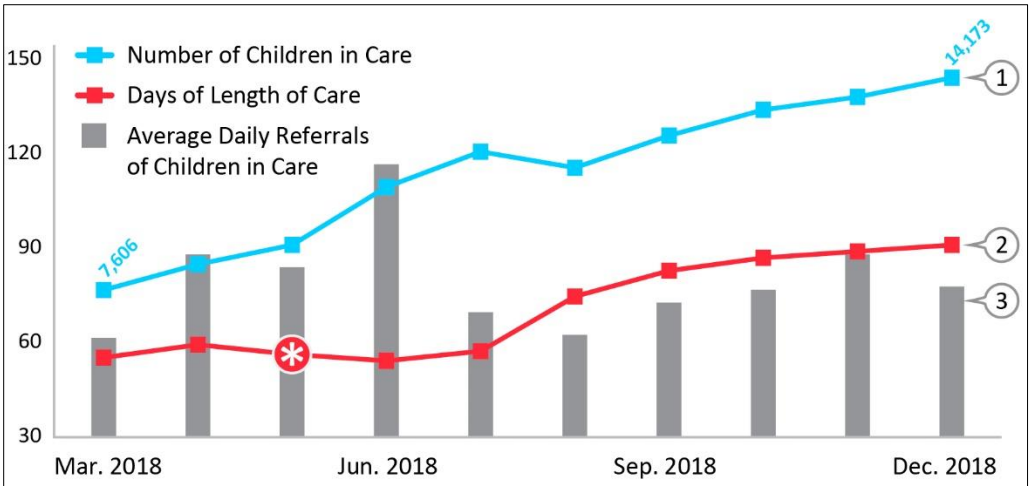
- **Indicator 1:** ORR's internal dashboard reports from late 2018 showed a current, and likely continued, need for influx beds. In fact, the October 1, 2018, report showed that CHS was providing influx services for 1,314 unaccompanied children at Homestead and that CHS's network capacity was 86 percent. According to ORR's policies and procedures, it can activate influx care facilities when capacity reaches 85 percent for 3 days. At the time of this dashboard report, Homestead had been activated since July 2018, which indicated there was already a strain on network capacity. The October 1, 2018, report also indicated that capacity was expected to increase from 86 to 90 percent within 2 weeks. According to dashboard reports, the capacity was 90 percent on November 1, 2018, and 92 percent on December 1, 2018.

- **Indicator 2:** Throughout 2018, the number of children in ORR's care steadily increased, which caused strain on capacity to also increase. To plan for capacity needs, ORR appeared to use referral numbers. However, these data are a volatile metric that did not fully explain the strain on capacity. In particular, the strain on capacity was explained in large part by increases in the length of care as a result of a memorandum of agreement between the Department of Homeland Security and HHS[12] that was signed in spring 2018, the effect of which was that fewer individuals came forward to sponsor children. ORR's data show a direct correlation between this agreement and a rise in the length of care in which children stayed in ORR's custody. According to ORR's reporting data, for a 6-month period beginning April 2018, the average length of care and total unaccompanied children in care across the entire network increased steadily at approximately the same rate even though referrals significantly decreased during some of these months. Therefore, we believe that ORR should have used the length-of-care data when determining whether to initiate a full and open competition in fall 2018 in addition to information on the number of referrals. All these metrics taken together indicated an increasing strain on network capacity at the time. (See the figure on the next page.)

[11] The dashboard report is a daily report that shows referrals of children to ORR, discharges of children to sponsors, and the bed capacity at ORR's network. The situational report shows metrics for Homestead, including referrals, discharges, and current population of children.

[12] *Memorandum of Agreement Among the Office of Refugee Resettlement of the U.S. Department of Health and Human Services and U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection of the U.S. Department of Homeland Security Regarding Consultation and Information Sharing in Unaccompanied Alien Children Matters* (signed on April 13, 2018, to take effect in 30 days). The memorandum of agreement required ORR to fingerprint all adult members of sponsor households and to share that information with DHS. (See the figure on the next page.)

Figure: Available ORR Data Showed the Strain on Capacity



* Effective May 2018: DHS and HHS entered into a memorandum of agreement in which HHS agreed to share information with DHS, including name, date of birth, address, fingerprints, and any available identification documents or biographic information regarding potential sponsors and adult members of the potential sponsors' household.

1. Number of children in care across ORR's network of facilities.
2. The increased length of care likely drove the increase of children in care and caused the capacity strain. The effect of the memorandum of agreement made it more difficult for individuals to sponsor children, and, therefore, increased ORR's length of care for children in its custody.
3. ORR relied on this metric to explain capacity strain, but the metric is volatile. ORR should have incorporated recent policy changes, and their effect on length of care, into its analysis about whether it would need to continue operating Homestead in spring 2019.

- **Indicator 3:** ORR had a historical pattern of increased seasonal referrals starting in the spring of each year, which ORR officials acknowledged. This suggested that ORR could expect a seasonal strain on the UAC network around the time when the existing Homestead task order was set to expire.

Because ORR did not plan in advance for the continued need for influx care, the only way to address the immediate need for increased bed capacity at Homestead was to award a sole source letter contract to CHS. If ORR had planned in advance for the expiration of the contract, it could have had full and open competition for a contract that would satisfy anticipated network capacity needs. Such competition would have enabled ORR to consider whether other contractors may have been able to provide higher quality services or lower cost services. In addition, competition can have other benefits, including helping to improve contractor performance, curb fraud, and promote accountability for results.[13]

[13] Competition in Federal procurement contracting has long been of interest to Congress and the executive branch, in part because of the belief that increased competition among potential vendors results in lower prices for the Government. A Presidential memorandum was issued on March 4, 2009, seeking to reduce the number of "noncompetitive" contracts by various means, including by issuing guidance on "Increasing Competition and Structuring Contracts for Best Results" in October 2009.

ORR DID NOT EFFECTIVELY MANAGE CONTRACTS FOR SERVICES PROVIDED AT HOMESTEAD

ORR did not effectively manage contracts for services provided at Homestead. Specifically, ORR: (1) did not establish control activities to place Homestead into warm status to protect public funds, (2) allowed an employee to assume COR responsibilities without formal designation and authorization as the COR for the letter contract with CHS, and (3) definitized the letter contract after the required completion threshold. In addition, ORR did not have policies and procedures for invoice review.

ORR Did Not Establish Control Activities To Place Homestead Into Warm Status To Protect Public Funds

Federal agencies must have control activities to achieve objectives, respond to risks, and ensure an effective internal control system (Government Accountability Office Standards for Internal Control in the Federal Government 10.01-10.02). Control activities are the policies, procedures, techniques, and mechanisms that enforce management's directives to achieve the entity's objectives and address related risks. In addition, HHS's Strategic Objectives indicate that operating divisions must have practices in place to improve decision making, which leads to cost savings and efficiencies in managing public funds.

Although ORR has policies and procedures for when to use an influx care facility, they do not specify when ORR should initiate a warm status for influx care facilities. Rather, ORR officials stated in an interview that they would consider moving influx care facilities to warm status when network capacity decreases below 75 percent and that they consider referral and discharge rates in their decision making. These management judgment calls are not adequate substitutions for control activities. Creating policies and procedures that specify how to use capacity metrics to initiate an influx care facility's warm status would align with other policies that ORR has established, which include capacity metrics for when to place children in influx care facilities, when to stop placing children in influx care facilities, and when to transfer children from influx care facilities. Established policies and procedures for determining when to place influx care facilities into warm status would improve ORR's ability to protect and effectively manage public funds.

ORR paid approximately $67 million to operate Homestead as fully staffed and equipped to serve 1,200 children for nearly 3 months after the last child left the influx care facility. Those funds were spent on labor, food, laundry, equipment rental, medical and office supplies, and travel to operate Homestead as though it was caring for 1,200 children. Moreover, we determined that when the last child left Homestead, ORR was using only 58 percent of its network capacity across all of its child care facilities; it estimated at the time that it would not reach a network capacity of 85 percent within a calendar year. During this same time period, ORR also had an additional influx facility in Carrizo Springs, Texas, at the ready capable of caring for an additional 1,300 children if an unanticipated influx of children had occurred during summer 2019.

On the basis of our review of ORR's data metrics (provided to us in dashboard and situational reports), we determined that the need to use Homestead was diminishing soon after ORR entered into the letter contract with CHS. Specifically, ORR's data metrics showed referrals decreased significantly beginning July 2019. Average daily referrals decreased from 362 in June 2019 to 185 in July 2019. In fact, over the course of the letter contract, the average length of care was mostly stagnant for children across ORR's network of facilities, which resulted in a significant decrease in the number of unaccompanied children in ORR's care starting August 2019. Children in ORR's care decreased from 13,027 on July 1, 2019, to 8,748 on August 5, 2019. This meant ORR had greater capacity in its permanent facilities and, therefore, had less need for its influx care facilities.

ORR Allowed an Employee To Assume Responsibilities as the Contracting Officer's Representative Without Designation and Authorization

HHS guidance[14] states that program offices must nominate a COR to the contracting officer. According to the HHSAR, a COR must be designated in writing by the contracting officer to monitor and administer a contract (HHSAR § 302.1(b)). In addition, the FAR requires that contracting officers designate and authorize, in writing and in accordance with agency procedures, a COR on all contracts and orders other than those that are firm-fixed price, unless the contracting officer retains and executes the COR duties (FAR § 1.602-2(d)). The nomination and designation process is intended to ensure that the employee who serves in this position is qualified to manage a contract and identify performance issues.

ORR's acting COR was a certified COR but was not officially designated by PSC; however, this employee performed the COR functions as if the designation had occurred. ORR allowed this employee to perform the duties of the COR for the letter contract with CHS. The employee served as the main point of contact between the Government and CHS, reviewed invoices, and made contract management decisions, including instructing CHS when to decrease bed capacity.

This occurred because ORR failed to nominate a COR to the contracting officer for the letter contract, and the contracting officer did not designate a COR in writing. Because of staff turnover at ORR and PSC, the officials responsible for nominating a COR were not available to answer our questions and current officials could not explain why PSC did not designate a COR in the letter contract. However, ORR officials stated that it is not ORR's standard practice to nominate a COR. Without a process to nominate and designate a COR, there is an increased risk that a person who is not fully qualified to carry out the responsibilities of a COR could, for example, approve invoices that contain unallowable costs or for services not performed or misinterpret performance requirements.

[14] *Memorandum on Revisions to Federal Acquisition Certification for Contracting Officer's Technical Representatives*.

ORR Definitized the Letter Contract After the Required Completion of Work

Each letter contract must contain a negotiated definitization schedule that will provide for definitization of the contract within 180 days after the date of the letter contract or before completion of 40 percent of the work to be performed, whichever occurs first (FAR § 16.603-2(c)).

Although a definitization schedule was included in the letter contract and the contract was definitized within 180 days, it occurred after completion of more than 40 percent of the work.[15] ORR definitized the contract on September 4, 2019—a month after the last unaccompanied child left Homestead (on August 3, 2019). ORR then downgraded Homestead to warm status on October 25, 2019. Therefore, by the time ORR definitized the contract, Homestead was of no practical use to ORR for the care of the unaccompanied children in its custody, and ORR did not realize any benefit of a process intended to be completed in advance of services rendered.

When we asked ORR why there was a delay in definitization, ORR, which relied on PSC for definitization, deferred to PSC to respond to our question. PSC provided multiple reasons for the definitization delay, including that the original contracting officer was placed on administrative leave and PSC had difficulty identifying someone with sufficient authority to sign contract modifications.

ORR Did Not Have Documented Policies and Procedures for Invoice Review

If a contractor becomes aware that the Government has overpaid an invoice payment, the contractor must return the overpayment (FAR § 52.232-25(d)).

Internal control guidance for Federal agencies requires agencies to establish controls that reasonably ensure, among other things, that funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation (Office of Management and Budget, Circular No. A-123, Management's Responsibility for Enterprise Risk Management and Internal Control). An example of such a control would be the establishment of policies and procedures for reviewing contractor invoices.

From our review of contract documents and interviews with ORR personnel, we found that ORR did not establish policies and procedures for reviewing invoices. Rather, ORR relied on the COR's knowledge, the terms of the contract, and the COR delegation memo to guide the invoice review. ORR officials were not able to describe the invoice-review steps taken by the acting COR. In addition, the letter contract did not specify who was responsible for reviewing invoices and did not determine who assumed responsibility for ensuring the management of deliverables and payment of invoices.

[15] At the time the letter contract was definitized, 43 percent of the estimated contract value had been paid to CHS ($128,040,573 of an estimated $297,594,959 in total costs).

Because it did not have established policies and procedures for invoice review, ORR did not properly safeguard funds against waste as it did not identify and recoup $2,581,157 in fixed fees after the contract was amended. Specifically, CHS invoiced $18,469,432 in fixed fees on the basis of the percentage proposed at the time that the letter contract was first being negotiated. The invoiced fixed fees were paid in full. After the facility was downgraded to warm status, ORR and PSC amended the contract, and ORR agreed to pay $15,888,275 in fixed fees related to those costs. At the time that we concluded our audit, CHS had not refunded the overpayment.

RECOMMENDATIONS

We recommend that the Office of Refugee Resettlement:

- develop plans for upcoming service needs by using all available data and indicators to ensure that it adheres to the FAR competition requirements,
- establish a policy and procedure that describes when an influx care facility should be placed into warm status to protect public funds,
- establish a policy and procedure for nominating in writing to PSC the employees it intends to serve as CORs,
- work with PSC to document roles and responsibilities for designating a COR and definitizing contracts in accordance with the FAR,
- establish written policies and procedures for reviewing invoices, and
- work with PSC to recoup the $2,581,157 overpayment of fixed fees from CHS.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, ACF, commenting on behalf of ORR, concurred with five of our six recommendations and described the actions it has taken or plans to take to address them. For example, ACF stated that the recently created Office of Government Contracting Services[16] (GCS) and ORR began discussions in September 2020 regarding ORR's new requirement for influx care operations and services. Specifically, GCS established standard operating procedures for reviews at multiple acquisition and procurement life-cycle stages to include acquisition strategy, presolicitation, and contract reviews. Furthermore, according to ACF, ORR has already modified its policies regarding influx care facilities by adding provisions

[16] GCS was established on August 21, 2020, by the HHS Deputy Assistant Secretary for Acquisitions and Senior Procurement Executive to provide contracting support for the 13 program offices and 21 regional offices that comprise ACF. GCS is responsible for all new awards executed by ACF from that date forward. GCS established a contracting branch to be responsive to ORR's mission needs.

that address, for example, when ORR may activate an influx care facility and when ORR may cease placements at an influx care facility. ACF also stated that, during late spring 2020, ORR implemented a process for nominating CORs to serve on contracts.

ACF did not indicate concurrence or nonconcurrence with our recommendation to work with PSC to recoup the $2,581,157 overpayment of fixed fees from CHS. However, ACF stated, "If PSC determines an overpayment was made, ACF will assist PSC in recouping any overpayments." In addition, ACF stated that ORR did not agree with the conclusion in our first finding that ORR did not comply with the FAR.

ACF also provided technical comments on our draft report that included further details about its justification to use a sole source contract for Homestead.

We considered ACF's comments and technical comments and maintain that our findings and recommendations are valid. Below, we summarize ACF's comments regarding the first finding and provide our responses.

ACF's comments, excluding the technical comments, are included as Appendix C.

COMPLIANCE WITH THE FEDERAL ACQUISITION REGULATION USING A SOLE SOURCE PROCUREMENT

ACF Comments

Regarding our first recommendation, although ACF concurred, it also stated, "ACF believes the OIG draft report makes a legal error in its assessment that the demands of spring 2019 were foreseeable." ACF stated that UAC migration patterns vary significantly and unpredictably from year to year and have proven difficult to predict beyond historical trends. ACF stated that ORR strongly believes it complied with the FAR in this sole source procurement.

OIG Response

We disagree with ACF's statement that we made a legal error. Although we agree with ORR that there were unprecedented increases in early 2019, there was a high demand for influx care during the same period in prior years. Given that history, ORR should not have waited until days before the contract expired to begin a competition process or an extension of the existing contract. We acknowledge there was an unusual and compelling urgency and do not dispute ACF's continued need for influx care. However, contracting without providing for full and open competition, even if the situation is unusual and compelling, cannot be based on a lack of advanced planning by the requiring activity (FAR § 6.301(c)(1)). Because ORR did not plan in advance for the continued need for influx care, the only way to address the immediate need for increased bed capacity at Homestead in spring 2019 was to award a sole source letter contract to CHS.

SIGNIFICANT AND UNPREDICTABLE INCREASE IN REFERRALS

ACF Comment

According to ACF, ORR noted that there was a significant and unpredictable increase in referrals over consecutive months from January 2019 through April 2019, which was higher than the program had ever experienced previously in those specific months. This increase in referrals strained ORR's permanent network bed capacity. From late summer and early fall 2018, there was no evidence in the UAC referral patterns to suggest that January 2019 through April 2019 would experience such historic records.

OIG Response

On the basis of our review of ORR's data metrics, we identified in our report additional indicators that were available to ORR officials in fall 2018 that showed the continued need for influx care was predictable. ORR made no effort to begin a competition process or an extension of the existing contract until days before the contract expired. Although we acknowledge that there was an increase in referrals in early 2019, in recent years smaller seasonal referral increases caused enough strain on capacity that ORR had to activate Homestead. In addition, the analysis provided by ACF regarding referrals in 2019 was not part of its decision-making process during fall 2018.

DECREASING LENGTH OF CARE

ACF Comment

ACF stated that we did not take into account the decreasing length of care (LOC) between November 2018 and April 2019.

OIG Response

We acknowledge that LOC decreased after policy changes were made in late 2018, and it was reasonable for ORR to anticipate a reduction in LOC in early 2019. However, as stated in our finding, the planning for spring 2019 should have been based on all available data from fall 2018 including LOC.

CONTRACTOR TRANSITION AND POTENTIAL IMPACT TO HOMESTEAD

ACF Comment

Lastly, ACF stated that ORR could not risk temporarily shuttering Homestead to facilitate a contractor transition because of child welfare concerns. ACF indicated that, during that time, ORR had no available bed capacity in its permanent network to transfer the children housed at Homestead.

OIG Response

We acknowledge that there would be logistical challenges with transitioning a new contractor into Homestead while children are present; however, ORR recognized this possibility and included a requirement in the contract with CHS for a "seamless transition," which would include identifying how to coordinate with an incoming contractor or Government personnel. Transition provisions are commonly included in Federal procurement contracts so as not to disrupt the provision of services.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our audit included the review of ORR's awarding of a sole source contract to CHS with an original ceiling value of $341,124,733, as well as the review of contracts for the three other Homestead service providers. We reviewed invoices from the three contractors that provided services and submitted invoices at Homestead during the audit period. SWK did not submit any invoices during our audit period. We selected a nonstatistical sample of 10 labor transactions of CHS employees totaling $56,756 and 10 labor transactions of CHS subcontractor employees totaling $20,757 that included all job types such as youth care workers, case managers, and clinical counselors.

We reviewed ORR's policies and procedures against Federal Standards of Internal Control related to control environment, control activities, and information and communication. We considered these internal control components and underlying principles to be significant to our audit objectives. We conducted our fieldwork from October 2019 through August 2020, which included fieldwork performed at ORR's offices in Washington, DC.

METHODOLOGY

To accomplish our objectives, we:

- reviewed Federal requirements and guidance, as well as ORR and PSC policies and procedures, related to contract awarding and management;

- interviewed ORR and PSC officials to gain background information about Homestead;

- analyzed ORR's data metrics used to monitor the UAC Program including referrals, discharges, the average length of care for unaccompanied children, and the number of children in care, to identify trends in the capacity of the UAC Program;

- reviewed ORR's JOFOC to determine whether ORR complied with associated FAR requirements;

- calculated overpayments of fixed fees invoiced by CHS;

- compared timesheet detail for a nonstatistical sample of CHS and its subcontractor employees with approved pay rates;

- compared, for the four contractors providing services at Homestead:

- SOWs to determine whether ORR contracted for the same services to be provided by multiple contractors,

- invoices to determine whether ORR paid multiple contractors for the same services, and

- each contractor's invoices to their cost proposals; and

- discussed the results of our audit with ACF, ORR, and PSC officials.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX B: SUMMARY OF HOMESTEAD CONTRACTS AND AMENDMENTS

CHS Contracts and Modifications

Award ID	Modification	Signed Date	Obligated Amount	Action Description
75P00119C00042	Base	4/12/2019	$113,708,244	Base letter contract
	1	6/5/2019		SOW and reduce bed capacity to 2,700
	2	7/10/2019		Wage determination changes
	3	8/19/2019	$88,480,797	Add $88,480,797 to funding
	4	9/5/2019		Definitize letter contract
	5	10/28/2019		Wage determination changes
	6	2/26/2020	$12,405,811	Downgrade to warm status
Total			**$214,594,852**	

Brookstone Contracts and Modifications

Award ID	Modification	Signed Date	Obligated Amount	Action Description
HHSP23337009T	Base	12/21/2018	$9,956,034	Includes SOW
	1	2/21/2019	$9,796,198	Extend period of performance
	2	5/2/2019	$9,879,475	Extend period of performance
	3	5/23/2019	$1,693,006	Changes in SOW to increase capacity to 2,700 beds
	4	9/20/2019	$22,395,774	Extend period of performance
	5	10/21/2019	$10,312,022	Extend period of performance
Total			**$64,032,509**	

GDIT Contracts and Modifications

Award ID	Modification	Signed Date	Obligated Amount	Action Description
75P00119F37010	Base	4/22/2019	$564,294	Includes SOW
	1	6/24/2019	($70,430)	Establish labor rates and material cost estimates
	2	7/3/2019	$467,581	Extend period of performance
	3	8/21/2019	$467,581	Extend period of performance
Total			$1,429,026	

SWK Contracts and Modifications

Award ID	Modification	Signed Date	Obligated Amount	Action Description
HHSP23337008T	Base	7/15/2018	$3,257,900	Includes SOW
	1	8/15/2018		Extend period of performance
	2	9/16/2018	$4,242,690	Extend period of performance
	3	10/15/2018		Extend period of performance
	4	12/16/2018		Extend period of performance
	5	2/16/2019		Extend period of performance
	6	4/22/2019		Extend period of performance
75P00119F37010	Base	6/20/2019	$6,943,970	Includes SOW
Total			**$14,444,560**	

APPENDIX C: AGENCY COMMENTS

ADMINISTRATION FOR CHILDREN & FAMILIES
Office of the Assistant Secretary | 330 C Street, S.W., Suite 4034
Washington, D.C. 20201 | www.acf.hhs.gov

November 12, 2020

Ms. Christi A. Grimm
Principal Deputy Inspector General
U.S. Department of Health and Human Services
330 Independence Avenue, SW.
Washington, DC 20201

Dear Ms. Grimm:

I am writing to provide the Administration for Children and Families' (ACF) response to the Office of Inspector General's (OIG) report titled, *The Office of Refugee Resettlement Did Not Award and Manage the Homestead Influx Care Facility Contracts in Accordance With Federal Requirements* (A-12-20-20001), which contains recommendations for the Office of Refugee Resettlement (ORR). ACF appreciates the opportunity to review and comment on the report. Below, please find ACF's general comments regarding the report and ACF's specific responses to each recommendation. Enclosed are technical comments that provide further details to support ACF's view that OIG's first finding is inaccurate. Please note that while this letter will refer to the Influx Care Facility as Homestead, the facility has since been renamed to Biscayne Influx Care Facility.

Although ACF generally agrees with the thrust of the OIG's recommendations, ACF believes the report as drafted misapprehends and misrepresents ORR's ability to predict – and therefore contract in advance for services related to – sudden influxes of unaccompanied alien children (UAC). With respect to the report's first finding that ORR did not comply with the Federal Acquisition Regulation (FAR) when it awarded a $341 million sole source letter contract to Comprehensive Health Service, LLC (CHS), ACF notes that the FAR authorizes the government to use a sole source contract when an urgent and compelling need arises. OIG references a variety of factors that were known to ORR in the fall of 2018 as evidence that ORR should have proceeded with a competition for bed capacity. However, as explained in this letter, the report fails to consider material facts, which make clear that there were unforeseen, or changed conditions that ORR could not anticipate. Thus, ACF believes the draft report errs in its evaluation of ORR's use of a sole source contract procurement.

ACF strongly believes that it did comply with the FAR in this sole source procurement. OIG's view that ACF "should have anticipated" the need for bed capacity rests on its presentation and interpretation of two basic data elements: the rate at which children were being referred to ORR, and the rate at which children were being discharged from ORR care. First, as detailed in the technical comments, ORR's largest predictor for the advanced planning of program needs is data representing historical migration trends and patterns, as well as current referral levels. Looking at late summer and fall 2018, there was no indication there would be

any dramatic deviation from expected projected patterns relative to previous years. However, from January 2019 through April 2019 ORR experienced its highest number of referrals in program history, deviating significantly from projected numbers, and subsequently straining ORR's permanent network bed capacity. The actual referrals for this period were 1-3 standard deviations above historical referral patterns, or over 10,000 referrals in excess of historical monthly averages. The historical monthly averages account for expected seasonable variation. Despite broad claims that ORR "should have anticipated" this unprecedented scenario because referrals typically increase moving into the spring months, OIG provides no evidence that the information available to ORR at the time a decision was required could reasonably be interpreted to suggest a future pattern of referrals of such historic proportions in excess of typical seasonal and historical trends. Further, due to the increase in referrals, ORR would likely not have had enough time to compete and award a complex procurement in time for the spring 2019 influx.

Second, with regard to the statement that ORR should have used the length-of-care (LOC) data when determining whether to initiate a full and open competition in fall 2018, ORR was in the process of actively working on a number of fronts to address the increase in LOC. As the enclosed technical comments show, OIG's data parameters did not include the decrease in LOC in November 2018 through April 2019. The decrease was due in large part to the issuance of the first in a series of operational directives targeting LOC. While ORR saw encouraging trends in the decrease of LOC, the unforeseen and unprecedented increase in referrals contributed to an urgent and compelling need to issue a sole source contract to ensure continued operations at Homestead.

ACF notes that ORR has recently increased its network of permanent licensed beds to prevent the need for an influx facility. However, ORR recognizes that maintaining a large excess capacity inevitably leads to taxpayer funds spent on unused capacity if projection numbers are not met. ORR consistently seeks to balance permanent licensed bed capacity needs with being a good steward of taxpayer funds by closely monitoring migration patterns, and reviewing historical trends in order to project program needs expediently and as accurately as possible. Historically, ORR has relied on influx facilities when projected referral numbers exceeded the number of available permanent licensed beds in ORR's network. When ORR and PSC were in the process of issuing a sole source contract for Homestead in preparation for the spring 2019 influx, UAC referral numbers increased substantially above previous years' trends, significantly outpacing projections. For example, fiscal year (FY) 2019 was ORR's highest year of total UAC referrals, exceeding over 69,000 referrals, surpassing the previous high-water mark of 59,170 referrals set in FY 2016 by over ten thousand referrals. In fact, the first nine months of FY 2019 totaled over 58,000 referrals, nearly meeting the total FY 2016 referral amount alone. In comparison, ORR experienced just over 37,000 referrals during the first 9 months of FY 2018, a difference of over 21,000 referrals from FY 2019.

Traditionally, a complex procurement can take upwards of 12-18 months to properly plan and execute. Due to the immediate need, the sole source contract was issued in order to continue operations at Homestead uninterrupted. Had ORR and PSC not initiated a sole source contract for Homestead, ORR would potentially have had to temporarily shutter Homestead to facilitate a contractor transition. For example, this would have required the existing contractor to return Homestead to its original state, then a newly awarded contractor would have to restart operations

to build up bed capacity to a level ready to continue receiving referrals from the Department of Homeland Security (DHS). During that time, ORR had no available bed capacity in its permanent network to transfer UAC housed at Homestead. While ORR moved quickly to identify suitable sponsors to unify children sheltered at Homestead, this process requires that ORR conduct thorough safety checks to ensure children are not placed with sponsors who can place them at risk.

Additionally, with the amount and pace of referrals at the time, lack of access to Homestead would have led to significantly more overcrowding in border patrol facilities that are not designed or equipped to house and care for children, which could present conditions that put vulnerable children at risk, such as by holding minors in close proximity to unrelated adults. Many children referred to ORR care have experienced significant trauma or have experienced traumatic events during their journey. ORR acted to ensure that it had the bed capacity necessary to continue accepting referrals in a timely fashion in order to provide access to child-friendly services as mandated by the *Flores* Settlement Agreement (FSA). This includes immediate access to mental health services and medical care. With child welfare concerns at the forefront, ORR could not, in good conscience, risk temporarily shuttering Homestead and potentially causing further overcrowding in border patrol facilities. The FAR's exception allowed ORR and PSC to issue a sole source contract and continue operations at Homestead uninterrupted, ensuring children were receiving shelter and the mandated child welfare services as required by the FSA.

From a legal point of view, "a change in conditions does not generally indicate a lack of advance planning by an agency; in fact, the changed conditions may warrant a sole source award in the short-term to allow the agency to adjust to the changed conditions." *See Petro Star, Inc.*, B-248019, July 27, 1992 (internal citations omitted). *See also Kollsman, A Div. of Sequa Corp.; Applied Data Tech., Inc.*, B- 243113; B-243113.2, July 3, 1991; *L-3 Communications Eotech, Inc., v. U. S. and Aimpoint, Inc.*, 85 Fed. Cl. 667 (February 18, 2009) (sole source contract necessitated by "unforeseen increases in demand and unanticipated delays"). Thus, based on the additional data and facts presented above, ACF believes the OIG draft report makes a legal error in its assessment that the demands of spring 2019 were foreseeable.

With respect to the report's second finding that ORR did not effectively manage contracts for services provided at Homestead in accordance with federal statutes, regulations, and HHS policies and procedures, it should be noted that ORR identified a proposed Contract Officer Representative (COR) early in the procurement process who helped prepare all necessary paperwork. This COR worked closely with ORR management and PSC to issue a new award, in addition to managing the overall site. ORR maintained significant oversight of this contract and took direction from ORR leadership in terms of operating in warm or operational status. However, the paperwork formally assigning the COR to the project was not completed in a timely manner by the contracting office due to various staffing issues. This was not an administrative error, as the assigned project officer worked under the direction of the contracting officer throughout the project period.

Although ORR maintains existing policies that direct its use of influx sites, the unusual dynamics of UAC referrals at this time informed agency leadership decisions related to keeping

the facility in operational and warm statuses for extended periods. Motivated by attention to child welfare concerns and the needs of UAC, Homestead operations were extended after the last child was discharged from Homestead to ensure adequate influx capacity should ORR receive another unforeseen spike in UAC referrals, which seemed very likely at the time given the unpredictable conditions on the ground. Furthermore, the contract had been structured in a manner to keep costs low and required local staffing. This was an attempt by the agency to avoid paying per diem to staff who were detailed in from other geographic areas. Unfortunately, this contract model did not allow sufficient flexibility in moving to warm and cold statuses as thousands of employees would be subject to layoffs if Homestead shuttered early. ORR has since moved to a more flexible staffing model, which is intended to allow future vendors to expand or reduce staffing more quickly.

ACF also notes an inherent tension between the report's key findings, which fault ORR for not contracting sufficiently far in advance for extra bed space, while also faulting ORR for funding unused bed space. If ORR is to adjust capacity in anticipation of fluctuations in the UAC population, an inescapable consequence is that there will be periods when additional capacity must be available in order to meet future need. This will result in spending taxpayer funds on unused bed capacity. Nevertheless, ACF acknowledges that the report provides several useful recommendations for better aligning procurement efforts with the inherent challenges to agency operations. ACF concurs in nearly all of the report's recommendations. ACF consulted with the Program Support Center (PSC) in preparing this letter.

The following are ACF's specific responses to each of the OIG's recommendations:

Recommendation 1: Develop plans for upcoming service needs by using all available data and indicators to ensure that it adheres to the FAR competition requirements.

Response: ACF concurs with this recommendation.

ORR disagrees with OIG's finding that the sole source contract was awarded in violation of the FAR. Although ORR recognizes that contract actions must adhere to the FAR, the FAR itself provides the sole source option when an urgent and compelling need arises. ORR continues to work with our partners at DHS and across its divisions to plan for upcoming service needs based on available data. ORR uses various internal models to drive internal decision making and actively uses any and all available data to update and refine these models as it becomes available. However, ORR notes UAC migration patterns vary significantly and unpredictably from year to year and have proven difficult to predict beyond historical trends. Due to the nature of the services (i.e., the frequency and volume, delivered under this contract), PSC executed a Justification and Approval for Other than Full and Open Competition under the authority of FAR 6.302-2 "Unusual and Compelling Urgency."

The Office of Government Contracting Services (GCS) was established on August 21, 2020, by the HHS Deputy Assistant Secretary for Acquisitions and Senior Procurement Executive to provide contracting support for the 13 program offices and 21 regional offices that comprise ACF. GCS is responsible for all new awards executed by ACF from that date forward. GCS established a contracting branch to be responsive to ORR's mission needs. GCS and ORR began discussions in September 2020 regarding the new requirement for influx care operations

and services. Additionally, GCS established standard operating procedures (SOP) for reviews at multiple acquisition and procurement lifecycle stages to include acquisition strategy, pre-solicitation, and contract reviews. The policies established provide additional due diligence for the adherence to FAR and the Health and Human Services Acquisition Regulation (HHSAR) to include FAR Part 6, Competition Requirements.

Recommendation 2: Establish a policy and procedure that describes when an influx care facility should be placed into warm status to protect public funds.

Response: ACF concurs with this recommendation.

As detailed above, moving forward, all new ORR contract awards will be executed by GCS. The new contract requirements are being developed by ORR and will take programmatic lessons learned into consideration. GCS will ensure influx contracts include language to ensure scalability and risk mitigation from a cost, schedule, and performance standpoint. ORR has already modified its policies regarding influx care facilities with provisions that include, for example, when ORR may activate an influx care facility and when ORR may cease placements at an influx care facility.[1]

Recommendation 3: Establish a policy and procedure for nominating in writing to PSC the employees ORR intends to serve as CORs.

Response: ACF concurs with this recommendation.

Part of acquisition planning includes when "requiring officials," such as ACF, nominate an employee intended to serve as COR. Prior to appointing an individual to serve as COR for a particular contract or order, PSC: (1) complies with the requirements and limitations specified in FAR 1.602-2(d), which requires that CORs be designated and authorized, in writing and in accordance with agency procedures, for certain contracts and orders; (2) complies with HHS policies on COR appointment; and (3) has internal review procedures in place that include verification that contract files contain documentation of COR certification and written COR appointment. COR appointments are in writing and delineate COR responsibilities for each contract.

During late spring 2020, ORR incorporated a process for nominating CORs to serve on contracts. The nomination letters are sent to the acquisition management service for consideration. Upon review and approval, the Contracting Officers (CO) will issue a designation letter, providing proper authority to oversee a given contract. With the standup of the GCS, the COR program will be managed internally for all contracts awarded by GCS to ensure training and certification requirements as well as continuous training opportunities. The COR appointment letter also establishes and outlines the scope of the COR's authority, duties, and limitations, as applicable, to the contract they are authorized to monitor.

[1] For more information on ORR policies for influx care facilities, see https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-7#7.1.

Recommendation 4: Work with PSC to document roles and responsibilities for designating a COR and definitizing contracts in accordance with the FAR.

Response: ACF concurs with this recommendation.

ORR will work with acquisition management services to support this recommendation. As detailed above, PSC follows regulatory requirements and HHS policies regarding appointment of CORs and written appointments delineate roles and responsibilities. PSC established Standard Operating Procedure and Directive 2020-07 "Letter Contracts Requirements" on May 29, 2020, to address the process to ensure staff is compliant with FAR 16.603 and HHSAR 316.603. Moving forward all new ACF contract awards will be executed by the GCS. Accordingly, the COR program will be managed by GCS and will ensure the appropriate training and certification is acquired and documented prior to appointment. GCS will ensure all requirements of the FAR and the HHSAR are followed in the execution of all new contract awards to include FAR 16.603, Letter Contracts.

Recommendation 5: Establish written policies and procedures for reviewing invoices.

Response: ACF concurs with this recommendation.

On October 15, 2020, ACF established a written policy and procedure for invoice processing. Additionally, GCS established an SOP to define the procedure for processing invoices, vouchers, and receiving reports through PSC. This procedure will be followed by ACF GCS COs, CORs, and receiving personnel when processing an invoice or voucher for payment. ORR will also incorporate all guidance from all acquisition management services and create policies and procedures for reviewing invoices.

Recommendation 6: Work with PSC to recoup the $2,581,157 overpayment of fixed fees from CHS.

Response: If PSC determines an overpayment was made, ACF will assist PSC in recouping any overpayments.

Again, I appreciate the opportunity to review and comment on this report. Please direct any follow-up inquiries to our OIG liaison Scott Logan, Office of Legislative Affairs and Budget, at (202) 401-4529.

Sincerely,

Lynn A. Johnson

Lynn A. Johnson,
Assistant Secretary
for Children and Families