U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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Comptroller General
of the United States

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Decision

Matter of: Acacia Center for Justice

File: B-424748; B-424748.2; B-424748.3

Date: November 18, 2026

James J. McCullough, Esq., Michael J. Anstett, Esq., and Robert C. Starling, Esq., Fried, Frank, Harris, Shriver & Jacobson LLP, for the protester.
Jarrod R. Carman, Esq., Preston H. Marquis, Esq., Jessica Shelnutt, Esq., Seth H. Locke, Esq., and Shervin Z. Taheran, Esq., Wilmer Cutler Pickering Hale and Dorr, LLP, for Our Rescue, the intervenor.
Terrius D. Greene, Esq., Tami S. Hagberg, Esq., and Mogbeyi E. Omatete, Esq., Department of Health and Human Services, for the agency.
Suresh S. Boodram, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Request to dismiss protest pursuant to Bid Protest Regulations, 4 C.F.R. § 21.11(b), is denied where pending litigation in U.S. District Court challenging the government's alleged failure to fund legal representation for unaccompanied minors presents issues separate from the instant bid protest challenging the agency's proposed sole source of a contract to provide such legal representation and, therefore, is unlikely to render a decision by our Office academic.

2. Request to dismiss supplemental protest challenging the awardee's relevant experience performing the services covered by the sole-source contract is granted where the protester's allegations were filed more than 10 days after it knew or reasonably should have known of its bases of protest.

2. Protest challenging the agency's award of a contract to provide interim services on a sole-source basis for legal representation services is denied where the agency reasonably determined that there was an unusual and compelling urgency based on the need to fulfill statutory obligations and comply with an injunction issued by a U.S. District Court, and the sole-source award did not result from a lack of advanced procurement planning.

3. Protest challenging the potential 18-month length of the agency's award of a sole-

source contract is denied where the record shows the agency reasonably determined that a maximum length of 18 months, consisting of a 6-month base period and potential option periods, was needed to ensure continuous services while the agency competitively procures the requirement.

DECISION

Acacia Center for Justice, of Washington, District of Columbia, protests the issuance of a sole-source contract to Our Rescue, of Sandy, Utah, by the Department of Health and Human Services (HHS), Office of Refugee Resettlement (ORR) for nationwide immigration legal representation services for unaccompanied migrant children. The protester principally contends that the sole-source contract exceeds the time necessary to meet the agency's needs, and was the result of the agency's lack of advanced planning.

We deny in part and dismiss in part the protest.

BACKGROUND

Under the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), ORR is required to provide unaccompanied migrant children with legal counsel to represent them in legal proceedings or provide them with counsel on "matters to protect them from mistreatment, exploitation, and trafficking." *See* 8 U.S.C. §§ 1221-32; Memorandum of Law (MOL) at 2. On November 30, 2023, Acacia, following the government's approval of a novation agreement, assumed all rights and obligations to become the prime contractor under a contract previously awarded by the Department of the Interior (DOI) on behalf of ORR for the provision of Unaccompanied Alien Children (UAC) legal services as required under the TVPRA and 45 C.F.R § 410.1309.[1] Agency Report (AR), exh. 4, Justification for Other than Full and Open Competition (JOFOC) at 4.[2] On March 21, 2025, DOI partially terminated for convenience contract line items within Acacia's contract for direct representation, recruitment, and direct representation expansion for the remainder of the then-current option period and all unexercised option periods.[3] *Id.*

[1] 45 C.F.R. Part 410 codifies the Unaccompanied Children Program Foundational Rule ("Foundational Rule"). 45 C.F.R. § 410. Specifically, it codifies "policies and requirements concerning the placement, care, and services provided to unaccompanied children in Federal custody by reason of their immigration status and referred to ORR." *Id.* Section 410.139 of the Foundational Rule sets the standards for legal services for unaccompanied children. 45 C.F.R. § 410.139.

[2] References herein to page numbers for AR exhibits and court pleadings are to the electronic pagination.

[3] The agency terminated the specific provisions in accordance with the acting Assistant Secretary for Administration for Children and Families' strategy to "transition UAC legal service delivery away from a standalone contract and toward a model in which grantee

(continued...)

On March 26, Acacia's subcontractors, a coalition of nonprofit legal service providers, filed suit against HHS in the U.S. District Court for the Northern District of California to challenge DOI's March 21 partial termination of Acacia's contract (hereafter the CLS Litigation). *Id.* at 5; MOL at 3. Relevant to the issues presented here, the plaintiffs in the CLS Litigation alleged that the government's cancellation of funding for counsel to represent accompanied minors violated the TVPRA and the agency's Foundational Rule, and, thus, constituted arbitrary and capricious agency action in violation of the Administrative Procedure Act (APA), 5 U.S.C. § 706(2)(A). *Community Legal Servs. in E. Palo Alto v. U.S. Dept. of Health & Human Servs.*, No. 3:25-cv-02847, ECF No. 1, Complaint at 35-39 (hereafter the CLS Complaint). Among other relief, the plaintiffs sought a declaratory judgment that the agency's actions violated the APA and that the government is "required to continue funding legal representation to unaccompanied children, consistent with the TVPRA and ORR's Foundational Rule," and injunctive relief enjoining the government from "ceasing to fund counsel to represent unaccompanied children in violation of the TVPRA and the Foundational Rule." *Id.* at 39.

On April 1, the District Court granted the plaintiffs' motion for a temporary restraining order (TRO) to enjoin the government "from withdrawing the services or funds provided by [ORR] as of March 20, 2025 . . . particularly ORR's provision of funds for direct legal representation services to unaccompanied children. This injunction precludes cutting off access to congressionally appropriated funding for its duration." AR, exh. 4, JOFOC at 5; *Community Legal Servs. in E. Palo Alto v. U.S. Dept. of Health & Human Servs.*, No. 3:25-cv-02847, Dkt. No. 37 (N.D. Cal. Apr. 29, 2025) (hereafter CLS Injunction).[4] Following the court's decision, DOI, on behalf of ORR, rescinded the partial termination for convenience and reinstated the terminated contract line items. AR, exh. 4, JOFOC at 5. On April 29, the District Court converted the TRO into a preliminary injunction.[5] *Id.*

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care providers would assume responsibility for legal orientations through cooperative agreement addendums, supplemented by a recorded 'Know Your Rights' video." AR, exh. 8, Acquisition Strategy at 2.

[4] The United States Court of Appeals for the Ninth Circuit subsequently dismissed the government's appeal challenging the TRO on the basis that a TRO is not appealable under 28 U.S.C. § 1292(a)(1). *Community Legal Servs. in E. Palo Alto v. U.S. Dept. of Health & Human Servs.*, No. 25-2358, 2025 U.S. App. LEXIS 9965 (9th Cir. Apr. 18, 2025), *pet. for rehearing en banc denied*, *Community Legal Servs. in E. Palo Alto v. U.S. Dept. of Health & Human Servs.*, No. 25-2358, Dkt. No. 22.1 (9th Cir. Apr. 25, 2025).

[5] As discussed herein, the CLS Litigation continues before both the U.S. District Court for the Northern District of California and the Ninth Circuit Court of Appeals. *See generally Community Legal Servs. in E. Palo Alto v. U.S. Dept. of Health & Human Servs.*, No. 3:25-cv-02847 (N.D. Cal.); *Community Legal Servs. in E. Palo Alto v. U.S. Dept. of Health & Human Servs.*, No. 25-2808 (9th Cir.).

On June 25, DOI notified ORR that it would discontinue contract support under the interagency agreement between DOI and HHS effective July 31, 2025, which would leave ORR without a contracting vehicle for legally mandated services with Acacia. *Id.* On July 30, in order to avoid a lapse in services, HHS awarded Acacia a one-year contract on a sole-source basis citing unusual and compelling urgent circumstances. *Id.* The contract had a period of performance from August 1, 2025, through July 31, 2026. *Id.*

On November 24, 2025, the agency issued a request for proposals (RFP), using competitive procurement procedures, seeking a contractor to provide nationwide immigration legal representation services for unaccompanied migrant children. *Id.* at 6. Acacia subsequently filed a pre-award protest with our Office challenging the terms of the agency's solicitation. *Acacia Ctr. For Justice*, B-424162, Dec. 31, 2025, at 1 (unpublished decision).[6] Acacia argued, among other things, that the solicitation contained numerous ambiguities and internal inconsistencies that prevented offerors from competing on an intelligent and equal basis. *Id.* On December 31, our Office dismissed Acacia's protest as academic after the agency agreed to take corrective action. *Id.* As part of its corrective action, the agency agreed to reassess its requirements, amend the RFP, and accept new or revised proposals. *Id.*

The agency subsequently issued an amended RFP and extended the deadline for proposal submissions. On April 3, Acacia and another offeror timely filed new pre-award protests with our Office challenging the terms of the revised solicitation. *ICF Inc., L.L.C.*, B-424162.2, Apr. 21, 2026, at 1 (unpublished decision); *Acacia Ctr. For Justice*, B-424162.3, Apr. 21, 2026, at 1 (unpublished decision). Acacia's protest alleged that the RFP's invoicing and payment terms were unduly restrictive of competition and that the RFP's mandatory withdrawal provision was ambiguous, unreasonable, unduly restrictive of competition, and potentially violative of state bar professional conduct codes. *Acacia Ctr. For Justice*, B-424162.3, Apr. 21, 2026, at 1 (unpublished decision). On April 21, we dismissed both protests as academic after the agency advised that it would take corrective action by reassessing its requirements, amending the solicitation as necessary to include a new proposal deadline, and accepting new or revised proposals from offerors. *Id.*

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[6] Acacia's first protest challenging the terms of the competitive solicitation triggered what is known as a Competition in Contracting Act (CICA) stay. 31 U.S.C. § 3553(c)(1). Pursuant to CICA, unless the head of a procuring activity waives compliance with the required stay, the agency may not award a contract in a procurement after the federal agency "has received notice of a protest with respect to such procurement from the Comptroller General and while the protest is pending." *Id.*; *Cuebid Techs., Inc.*, B-423161.7, June 4, 2025, at 6. The agency similarly complied with the CICA stay requirements for Acacia's subsequent protests challenging the terms of the competitive solicitation. GAO does not administer the requirements to stay award or suspend contract performance under CICA. *See* 4 C.F.R. § 21.6.

The agency subsequently published another amended version of its RFP with revisions that modified, among other things, the solicitation's performance work statement and invoicing procedures. The amendments also extended the proposal submission deadline to June 15. *Acacia Ctr. For Justice*, B-424162.4, Sept. 18, 2026, at 3. Before the closing date for proposals, Acacia filed its third protest with our Office challenging the terms of the amended RFP. *Id.* Acacia primarily made three arguments. *Id.* First, Acacia argued that the solicitation's invoicing submission terms were unduly restrictive of competition because they unreasonably required the contractor to wait an unreasonable time before it could invoice the agency for payment. *Id.* Second, Acacia challenged the scope of representation and hearing requirements as unduly restrictive because the solicitation required the contractor to represent all unaccompanied children, without HHS providing information and funding for the contractor to adequately comply. *Id.* Third, the protester contended that the solicitation's supporting documentation requirement for invoicing was unreasonable because it obligated the contractor to violate its ethical obligations by submitting potentially identifiable information and confidential information without the client's informed consent to invoice and receive payments. *Id.* On September 18, our Office denied Acacia's protest. *See generally Acacia Ctr. For Justice*, B-424162.4, Sept. 18, 2026.

During the pendency of Acacia's June 15 protest, the agency determined that it would not be able to competitively award a contract for UAC legal services before Acacia's sole-source contract ended on July 31, 2026. AR, exh. 4, JOFOC at 7. On July 2, to ensure the continued provision of UAC legal services after July 31, the agency emailed Acacia seeking a follow-on bridge contract. AR, exh. 17, July 2 Acacia Email at 1. The new contract was to start on August 1, 2026, and had an expected period of performance of 12 months, which were to be split into four, 3-month option periods. *Id.* On July 9, however, Acacia raised several concerns with the proposed terms of the bridge contract, including terms that Acacia argued would require it to "disclose information that is protected from disclosure under attorney ethics rules," and "perform, without an adequate transition period, new deliverables for which there is no existing process or infrastructure." AR, exh. 18, Acacia Email Exchange at 11-12. Based on Acacia's July 9 response, the agency concluded that the parties would not be able to negotiate a mutually agreeable contract. Because Acacia's current contract expired on July 31, the agency faced the prospect of not having a contractor to provide UAC legal services in the coming weeks. AR, exh. 5, Determination of Exceptional Circumstances (DEC) at 4.

On July 10, the agency conducted market research to determine if there were other potential contractors that could fulfill the agency's requirements as a bridge between the end of Acacia's current contract on July 31 and the award of the contract under the pending competitive procurement. AR, exh. 22, Our Rescue Email at 10-11. The agency emailed two potential offerors, including Our Rescue, to ascertain each offeror's interest and capability to provide the agency's requirement for UAC legal services under a new bridge contract. *Id.* On July 13, both offerors confirmed that they were interested and capable of fulfilling the agency's requirement after July 31. *Id.* at 9-10. On July 24,

the HHS Secretary approved a determination of exceptional circumstances (DEC) authorizing the issuance of a sole-source contract with a period of performance exceeding one year. AR, exh. 5 DEC at 7. On July 28, the HHS Secretary approved ORR's request to fund and award up to three sole-source bridge contracts due to unusual and compelling urgency. AR, exh. 6, ORR Funding Memo at 8.

Relevant to the issues presented, on August 7, the agency awarded a sole-source contract to Our Rescue for UAC legal services under the authority of Revolutionary Federal Acquisition Regulations (RFO) 6.103-2, *Unusual and Compelling Urgency*. AR, exh. 23, Our Rescue Award Decision at 1-3. The contract has a six-month base period, two three-month option periods, and a six-month option period for a total potential contract length of 18 months.[7] *Id.* at 2. On August 17, Acacia filed the instant bid protest with our Office challenging the agency's award to Our Rescue.

DISCUSSION

Acacia primarily makes two challenges. First, Acacia argues that the urgency of the requirement that resulted in the sole-source award to Our Rescue was a result of the agency's lack of adequate advance procurement planning. Protest at 22. The protester further contends that the length of Our Rescue's sole-source contract is unjustifiably long and exceeds the time necessary for the agency to make a competitive award. *Id.* at 19. While we do not specifically address herein every ancillary and corollary argument raised by the protester, we have considered them all and conclude that none provides a basis to sustain the protest.

Procedural Matters

Before addressing the merits of the protester's two primary challenges, we first address the agency's requests for dismissal of the protest.

Concurrent Litigation

The agency first contends that the entirety of Acacia's protest and supplemental protests should be dismissed because the CLS Litigation is currently pending before a court of competent jurisdiction, and a decision by the U.S. District Court for the Northern District of California could potentially render a decision by our Office academic. *See* MOL at 5-6; Supp. Agency Report at 1. The protester argues that the CLS Litigation deals with a separate matter from the instant bid protest and that the decision of the District Court will not render a decision from our Office academic. Supp. Comments at 4. For the reasons that follow, we agree with the protester and, therefore, decline to dismiss the protest on this basis.

[7] The six-month option period was issued pursuant to RFO clause 52.217-8, and provides for the continuity of legal representation services for up to six months pending award of a competitive follow-on contract. AR, exh. 4, JOFOC at 2; MOL at 3.

Our Office will not decide a protest where the matter involved is the subject of litigation before a court of competent jurisdiction. 4 C.F.R. § 21.11(b); *Blue Rose Consulting Grp., Inc.*, B-421229, Nov. 22, 2022, at 2. Even where the issues before the court are not the same as those raised in our Office by a protester, or are brought by a party other than the protester, we will not consider the protest if the court's disposition of the matter could render a decision by our Office academic. *Id.* Where there is a possibility that the court's consideration of an issue may render a decision by our Office academic, dismissal is appropriate. *Id.* at 3.

As noted above, on March 21, 2025, DOI notified the protester, the sole contractor for UAC direct legal representation services at the time, that it was terminating the contract line items through which HHS and ORR provided funding for counsel for UAC in legal proceedings. AR, exh. 4, JOFOC at 4. Shortly thereafter, Acacia notified its subcontractors responsible for direct legal representation services of the agency's cancellation order. On March 26, 2025, Acacia's subcontractors filed suit in the U.S. District Court for the Northern District of California challenging the cancellation order. The CLS plaintiffs allege that the cancellation order, and the agency's resulting failure to fund legal representation for unaccompanied minors violates the APA, TVPRA, and Foundational Rule. *See generally* CLS Complaint. The CLS plaintiffs seek declaratory and injunctive relief to rescind the cancellation order and to otherwise ensure that HHS and ORR fund UAC legal representation. *Id.* at 39.

As discussed above, on April 1, 2025, the District Court issued a TRO enjoining the government from withdrawing the services or funds provided by ORR for direct legal representation services to UAC. AR, exh. 4, JOFOC at 5. On April 29, the District Court granted the plaintiffs' motion to convert the TRO into a preliminary injunction. The preliminary injunction precluded HHS and ORR from "cutting off access to congressionally appropriated funding for [UAC legal representation for] its duration." CLS Injunction at 28.

On September 24, 2026, the CLS plaintiffs filed a motion for order to show cause as to why the government was not in violation of the preliminary injunction. AR, exh. 25, CLS Motion to Show Cause at 19. In its motion, the plaintiffs argue that the government should be found in violation of the preliminary injunction for its "continuing and willful failure to provide the services and funding required by the TVPRA, the Foundational Rule, and the preliminary injunction." *Id.* at 3. In this regard, the plaintiffs contend that the government is spending significantly less and providing fewer services than it previously provided for UAC legal representation. *See, e.g., Community Legal Servs. in E. Palo Alto v. U.S. Dept. of Health & Human Servs.*, No. 3:25-cv-02847, ECF No. 205, Plaintiffs Post-Hearing Brief at 4, 9, 11-15. In this regard, the plaintiffs complain that the agency's failure to timely establish a competitive replacement to Acacia's incumbent contract and the proposed sole-source award to Our Rescue is insufficient to remedy the decreased funding and resulting gap in services. *Id.* at 15-18; AR, exh. 25, CLS Motion to Show Cause, at 13-14. The government is contesting the plaintiffs' arguments, and the issue is currently pending before the District Court.

As it relates to this bid protest, the agency asserts that "the material issues raised in [Acacia's] protest are before a court of competent jurisdiction." MOL at 5; *see also* Intervenor's Supp. Comments at 2 (joining the agency's request). The agency argues that the issues presented before GAO and the District Court are "virtually identical" and that the relief that the CLS plaintiffs seek could render a decision by our Office academic. MOL at 6. Specifically, the agency contends that the CLS plaintiffs and Acacia both raise allegations concerning the extent of Our Rescue's relevant experience, the adequacy of the agency's transition planning, and the adequacy of the agency's consideration of cooperative agreements and the award to Our Rescue. *Id.*

The agency also argues that "prudential considerations" warrant dismissal of the protest because "there are parallel district court proceedings pending resolution involving the same material facts and issues and the district court's decision will obviate a GAO decision." Supp. Agency Report at 1-2. On this point, the agency asserts that the guiding consideration should not be the differences between the claims made by the CLS plaintiffs and Acacia, but rather whether the District Court's disposition could render Acacia's protest academic based on the specific facts and issues Acacia has presented to our Office. *Id.* at 2. As mentioned above, the preliminary injunction issued in the CLS Litigation requires the government to continue funding and services for direct legal representation of UAC. AR, exh. 4, JOFOC at 5. Additionally, the pending motion before the District Court directly challenges the agency's compliance with the preliminary injunction and, in part, implicates the agency's sole-source contract award to Our Rescue. AR, exh. 25, CLS Motion to Show Cause at 3, 13-14. Accordingly, the agency argues that the District Court's ruling on the plaintiff's motion or GAO's resolution of Acacia's bid protest could conflict in such a manner that would render our decision academic. Supp. Agency Report at 3.

Acacia requests that GAO retain jurisdiction, asserting that there is no material overlap between the issues at GAO and before the District Court. The protester contends that the CLS Litigation focuses on whether UAC are adequately legally represented and whether the necessary funding is flowing to that purpose. Comments at 10. Acacia's protest, however, challenges the reasonableness of the agency's sole-source award to Our Rescue. *Id.* The protester also contends that prudential concerns are not implicated here. At no point has the District Court been asked to review or adjudicate "[t]he reasonableness of the [JOFOC], HHS's solicitation of sources, the reasons for HHS's urgency, the sole-source award, and HHS's decision to select [Our] Rescue for award. . . ." *Id.* The protester also challenges the agency's assertion that a ruling from the District Court on the plaintiff's motion to show cause could render a ruling from GAO academic. Specifically, Acacia explains that if our Office sustains its protest, the agency has other procurement options at its disposal to ensure that it continues to provide UAC legal services in conformance with the District Court's preliminary injunction. *Id.* at 11. Alternatively, if the District Court finds that the agency is not in compliance with the preliminary injunction, that ruling does not affect how our Office would resolve the protester's challenge to the Our Rescue sole-source contract. Supp. Comments at 4.

We agree with the protester. As stated above, the CLS Litigation focuses on the legality of the agency's cancellation order of direct legal representation services for UAC, whereas Acacia's bid protest primarily challenges the reasonableness of the sole-source award to Our Rescue. As our Office has previously stated, we interpret the "matter involved," as contemplated by our regulations, to require, at a minimum, that the agency's procurement actions be at issue both at GAO and a court of competent jurisdiction, although the specific agency actions challenged need not be the same. *Trax Int'l Corp.*, B-420361.7, B-420361.8, June 28, 2023, at 8. Here, we find the matters raised in the CLS Litigation and this bid protest to be sufficiently differentiated such that the court suit and this bid protest are challenging different agency actions.

While we find the "matters involved" in the two cases are sufficiently different such that dismissal is not appropriate, we also do not find that the motion before the District Court could make a decision from our Office academic. While the CLS plaintiffs raise allegations related to the proposed sole source to Our Rescue, our Office does not read the plaintiffs' complaint as putting the issue of the reasonableness of the agency's award to Our Rescue before the District Court. In this regard, while the CLS plaintiffs allege that the contract fails to fulfill all services covered by the preliminary injunction, nowhere do the CLS plaintiffs argue that the District Court should set aside or otherwise enjoin the performance of the contract. Stated differently, even if the CLS plaintiffs are correct that HHS and ORR must ensure that UAC receive additional services not covered by Our Rescue's contract, such a determination does not necessarily mean that performance of the Our Rescue contract would be enjoined by the District Court; rather, it is more likely that the court would simply direct the agency to ensure that the additional services are otherwise provided for.

Here, the record is clear that the propriety of the agency's award to Our Rescue is the issue at GAO and not actively before the District Court. And the issue of whether the agency's actions aligned with the TVRA and the Foundational Rule is before the District Court and not at issue before our Office. Because the matters are not the same, both the agency and intervenor fail to articulate how a ruling from the District Court could conflict with a decision from our Office. For that reason, we deny the agency's request to dismiss the protest on this basis.

Second Supplemental Protest

On September 14, Acacia filed its second supplemental protest, in which the protester argued, for the first time, that the agency irrationally determined that Our Rescue had relevant experience and a capability to meet the agency's needs. 2nd Supp. Protest at 33. In this regard, Acacia contends that the agency's JOFOC makes clear that Our Rescue has no prior history of federal contracting activity and the JOFOC's list of Our Rescue's qualifications do not demonstrate the required expertise for the services required under the contract. *Id.* at 33-35. On this basis, the protester argues that the agency's reliance on its "paper-thin 'market research'" to justify its award to Our Rescue was unreasonable. Supp. Comments at 3. The protester asserts that its protest was timely based on the agency's September 4 posting of the JOFOC. *See* Comments at 3.

The agency requests dismissal of the second supplemental protest as untimely. In particular, the agency argues that the protester knew or should have known the bases for its allegation regarding Our Rescue's alleged lack of relevant experience and qualifications prior to the protester's receipt of the September 4 JOFOC. Supplemental Agency Report at 3-4. In support of its contention, the agency notes that on August 20, the CLS plaintiffs filed a motion before the District Court "to show cause at an evidentiary hearing . . . to demonstrate why [defendants] should not be found in violation of [the April 29 preliminary injunction]." MOL at 4. In its initial motion and in its September 24 motion to show cause, the CLS plaintiffs discussed Our Rescue's alleged lack of experience and qualifications and argued that Our Rescue was not qualified to perform UAC legal services. *See e.g.,* AR, exh. 25, CLS Motion to Show Cause at 13 (citing public sources in support of its contention regarding Our Rescue's lack of relevant experience and qualifications). Given the fact that the CLS plaintiffs were able to raise a challenge to Our Rescue's relevant experience at least as early as August 20, the agency argues that the protester knew or reasonably should have similarly known of its basis for protest based on Our Rescue's alleged lack of experience and qualifications, and was therefore required to file its second supplemental protest earlier than September 14. MOL at 7.

The protester counters that the agency's request for dismissal misunderstands its second supplemental protest. In particular, the protester argues that its argument focuses on the weakness of the agency's market research to justify the agency's award to Our Rescue. Comments at 2-3. The protester therefore argues that regardless of whether it was or should have been aware of Our Rescue's alleged lack of experience and qualifications earlier, it was not required to file its second supplemental protest until September 4, when the agency released the JOFOC, which included the agency's market research. *Id.*

Under our Bid Protest Regulations, protests based on other than solicitation improprieties must be filed within 10 days of when the protester knew or should have known their basis. 4 C.F.R. § 21.2(a)(2). Protesters have an affirmative obligation to diligently pursue information that forms the basis for their protest and must do so in a reasonably expedient manner, considering the circumstances of the case. *General Physics Fed. Sys., Inc.*, B-274795, Jan. 6, 1997, at 2. Further, our regulations do not contemplate the piecemeal presentation or development of protest issues; where a protester raises a broad ground of protest in its initial submission but fails to provide details within its knowledge until later, so that a further response from the agency would be needed to adequately review the matter, these later issues will not be considered. *22nd Century Techs., Inc.*, B-413210, B-413210.2, Sept. 2, 2016, at 9.

Here, there is no question that Acacia could have challenged the qualifications and experience of Our Rescue based on the same public information that the CLS plaintiffs relied on in their August 20 filing in District Court. While the protester attempts to cast its protest as a challenge to the agency's market research, such that timeliness should be measured from when the agency's market research in the JOFOC, the protester is

creating a distinction that is without a difference. The main thesis of Acacia's challenge to the agency's market research is that the research doesn't reasonably support a conclusion that Our Rescue has the necessary qualifications and experience to do the work. This concern about the qualifications of Our Rescue should have been readily apparent to Acacia at the time it filed its initial protest. Our decisions have repeatedly concluded that a protester need not await perfect knowledge before filing a protest. *See e.g., DLH, LLC*, B-424528 *et al.*, Aug. 31, 2026, at 7 n.7 (dismissing protest ground as untimely where protester had knowledge of protest ground but waited until after the agency filed its agency report to bring its supplemental protest); *see also Antium, LLC*, B-421291, B-421291.2, Mar. 6, 2023, at 8 (dismissing protest ground as untimely where protester had knowledge of protest ground from debriefing but did not raise it until comments to agency report). Because Acacia knew, or reasonably should have known, of its bases of protest regarding Our Rescue's alleged lack of relevant qualifications and experience when it filed its initial protest, well before it received the JOFOC on September 4, Acacia's second supplemental protest is dismissed as untimely.[8]

Lack of Advance Planning

Turning to the merits of the protest, the protester's first principal contention is that the unusual and compelling urgent circumstances under which the agency issued the awardee's sole-source contract were the result of the agency's lack of adequate advanced planning. In this regard, Acacia contends that while the agency began the process of competitively awarding its long-term requirements back in November 2025, it failed to reasonably consider awarding a bridge contract for its interim requirements pending the completion of the competitive follow-on procurement until July 2026. In particular, the protester highlights how the agency was aware of the CICA stay imposed by Acacia's June 15 pre-award protest of the terms of the competitive procurement for UAC legal representation and the July 31 expiration date of Acacia's bridge contract. Protest at 23-25; *see* 31 U.S.C. § 3553(c)(1). According to the protester, the agency should have been planning for alternative options to the competitive award, such as the award of a bridge contract, well ahead of the known July 31 expiration date. The protester alleges that the agency, instead waited until July 2026 to consider any alternatives that would have resulted in an award for the agency's interim requirements pending the completion of the competitive procurement for the agency's long-term follow-on requirements. *Id.* at 25. The protester further contends that the agency's

[8] Additionally, to the extent the protester challenges the agency's determination of Our Rescue's capability to perform under the contract, we find that the protester's argument amounts to a challenge to the agency's affirmative determination of responsibility. As our Office has explained, the affirmative determination that an offeror is capable of performing a contract is largely committed to the contracting officer's discretion. *Great Lakes Dredge & Dock Co., LLC*, B-416073, May 24, 2018, at 3. Our Office generally will not consider a protest challenging such a determination, except under certain limited exceptions not alleged here. 4 C.F.R. § 21.5(c); *Newt Marine Serv.*, B-422968, Nov. 4, 2024, at 3.

urgency was compounded by the unreasonable terms the agency presented to Acacia during the agency's attempt to negotiate a second bridge contract with Acacia to maintain UAC legal services. *Id.*

In response, the agency maintains that from November 2025, it has continuously attempted to fulfill its need for legal services through a competitive award process. However, Acacia protested each of the three solicitations the agency published to competitively fulfill the requirement, delaying the agency's ability to competitively award a follow-on contract for the requirements. Supp. Agency Report at 5-6. Regarding the agency's actions after receiving the protester's June 15 protest, the agency maintains that it tried to negotiate a sole-source contract with the protester but was unable to come to an agreement with the protester and ceased negotiations on July 9. *Id.* at 6. Finally, the agency argues that the record supports the agency's assertion that it worked diligently to find a capable provider after July 9. *Id.* Therefore, the agency argues that the record does not support a finding that the agency failed to engage in adequate advanced planning.

CICA permits an agency to use other than competitive procedures in acquiring goods or services where the agency's requirement 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 proposals. *See* 41 U.S.C. § 3304(a)(2); RFO 6.103-2. When using noncompetitive procedures pursuant to 41 U.S.C. § 3304(a)(2), such as here, agencies are required to execute a written JOFOC with sufficient facts and rationale to support the use of the cited authority. 41 U.S.C. § 3304(e)(1)(A); RFO §§ 6.103(d)(2), 6.104, 6.301. Noncompetitive procedures may not properly be used where the agency created the urgent need through a lack of adequate advance planning. 41 U.S.C. §§ 3304(e)(5)(A)(i); RFO § 6.103(b)(1); *Worldwide Language Resources, Inc.; SOS Int'l Ltd.*, B-296984 *et al.*, Nov. 14, 2005, at 12.[9] While an agency may not justify a noncompetitive award on the basis of urgency where the agency's requirements have become urgent as a result of a lack of adequate advance planning, such planning need not be entirely error-free or successful. *Pegasus Global Strategic Solutions, LLC*, B-400422.3, Mar. 24, 2009, at 9; *Sprint Commc'ns Co., L.P.*, B-262003.2, Jan. 25, 1996, at 8-9. Our review of an agency's decision to conduct a noncompetitive procurement focuses on the adequacy of the rationale and conclusions set forth in the JOFOC; where the JOFOC sets forth a reasonable justification for the agency's actions, we will not object to the award. *Research Analysis & Maint., Inc.*, B-296206, B-296206.2, July 12, 2005, at 4; *Global Solutions Network, Inc.*, B-290107, June 11, 2002, at 6.

As an initial matter, the protester concedes that the agency has a compelling need for the services covered by the sole-source contract. *See* Protest at 2 ("There is no

[9] As relevant to this decision, the applicable provisions of RFO 6.103-2 and FAR 6.302-2 are materially similar; therefore, we find that our prior decisions interpreting and applying FAR 6.302-2 are persuasive.

question that HHS has a compelling need--indeed, an unequivocal statutory obligation--to provide for unaccompanied migrant children to receive the legal services at issue in this protest."). The protester's objection is that the urgency resulted from a lack of adequate advance planning on the part of the agency. We do not agree with Acacia.

As described above, and as pointed out by the agency, the record demonstrates that going back to November 2025, the agency has taken reasonable steps to award a competitive contract for the services. *See* AR, exh. 5, DEC at 4. In this regard, we find no merit in the protester's assertion that the delays in awarding the competitive follow-on contract--which were principally attributable to multiple successive rounds of bid protests filed against the terms of the competitive solicitation--were the result of a lack of adequate advance planning. *See, e.g.*, *M&C Venture Grp., LLC*, B-419270, Jan. 11, 2021, at 5-6 (rejecting protester's argument that delays attributable to successful bid protests and implementation of associated corrective action resulting in the award of a sole-source contract were the result of a lack of adequate advance planning); *Camden Shipping Corp.*, B-406171, B-406323, Feb. 27, 2012, at 8 (same, with respect to delays attributable to successful size status challenges). On the record presented, we find no basis to conclude that the delay in awarding a competitive follow-on procurement necessitating the issuance of a sole-source bridge contract was the result of a lack of adequate advance planning by the agency.

We also do not agree with the protester's contention the agency's unsuccessful contract extension discussions with Acacia reflects a lack of advance planning. Rather, they simply reflect legitimate agency concerns about the terms of contract performance, many of which we addressed when denying Acacia's protest of the terms of the competitive follow-on procurement. *See generally Acacia Ctr. For Justice*, B-424162.4, Sept. 18, 2026. Accordingly, this protest ground is denied.

Duration of the Sole-Source Contract

Acacia's final contention is that the potential 18-month length of the sole-source contract awarded to Our Rescue is unjustifiable. In this regard, the protester argues that the length of the contract exceeds the time necessary for the agency to make a competitive contract award and that the agency failed to provide an explanation that proves otherwise. Protest at 19. In response, the agency states that the length of the contract is based on the history of the procurement and the importance of maintaining uninterrupted services. Supp. Agency Report at 6.

Applicable procurement regulations provide that the total period of performance of a contract awarded or modified under unusual and compelling urgency circumstances may not exceed the time necessary to: (a) "to meet the unusual and compelling requirements of the work to be performed under the contract;" and (b) "for the agency to enter into another contract for the required goods and services through competitive procedures." RFO 6.103-2(c)(1)(i)-(ii). Procurement regulations also provide that such a contract may not exceed one year unless the head of the agency determines that

exceptional circumstances apply. RFO 6.103-2(c)(2). The exceptional circumstances determination must be documented. RFO 6.103-2(c)(2)(i).

Here, the agency had a reasonable basis for the length of the sole-source contract awarded to Our Rescue. As explained in the DEC, the expiration of Acacia's contract on July 31 created a significant risk of indefinite service disruption, which could result in thousands of children facing immigration proceedings without representation. AR, exh. 5, DEC at 3. The history of this procurement also shows that the agency unsuccessfully attempted to competitively award this procurement, including generating three rounds of protests since the issuance of the solicitation in November 2025.[10] *See Id.* at 4. Moreover, while the total possible length of the contract award to Our Rescue is 18 months, the base length of the contract is only six months, with options that the agency can exercise if necessary until a competitive contract is awarded. In this regard, we have explained that "[g]iven the nature of the protest process, agencies are faced with uncertainty regarding the amount of time necessary to reach an ultimate resolution of the matter; a protest filed in our Office can take up to 90 working days to be resolved, and, if sustained, an indeterminate amount of additional time may be necessary to implement any corrective action recommended by our Office." *Unified Indus., Inc.*, B-241010, B-241010.2, Dec. 19, 1990, at 4-5. In light of the contentious history of this procurement and the agency's obligations to provide uninterrupted legal representation both by statute and the District Court's injunction, the agency has reasonably justified the proposed duration of the contract. Based on the record, we see no reason to find the potential length of the sole-source contract to be unreasonable.

The protest is denied in part and dismissed in part.

Edda Emmanuelli Perez
General Counsel

[10] Following our denial of the protester's last challenge to the terms of the competitive follow-on procurement, Acacia subsequently filed a protest at the U.S. Court of Federal Claims on October 7, 2026. At the time of this decision, that protest remains pending. *Acacia Ctr. for Justice v. United States*, No. 26-cv-1500 (Fed. Cl.).