U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Mistral Inc.

File: B-422905; B-422905.2

Date: December 13, 2024

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DIGEST

Protest challenging the agency's award of a sole-source contract pursuant to temporary acquisition authority is denied where the record demonstrates the agency's written determination and findings (D&F) was sufficient to support the use of the authority for other than full and open competitive procedures.

DECISION

Mistral, Inc., a women-owned small business of Bethesda, Maryland, protests the award of sole-source contract No. W91CRB24D0011 to AeroVironment, LLC, of Simi Valley, California, awarded by the Department of the Army for loitering munitions weapons systems and related services. The protester primarily argues that the determination and findings (D&F) prepared by the agency is insufficient to justify the award of the contract on a sole-source basis.

We deny the protest.

BACKGROUND

This protest involves complex and unique procurement and procedural histories and amendments to relevant procurement statutes and regulations. We discuss each in more detail below.

History of the Army's Loitering Munitions Requirement[1]

On December 9, 2022, U.S. Army Futures Command[2] issued a "Directed Requirement" memorandum, establishing a requirement for the agency's acquisition of loitering munitions.[3] COS/MOL at 4; AR, Tab 4, Directed Requirement for Lethal Unmanned Systems for Infantry Brigade Combat Teams. In May 2023, the Army transferred responsibility for the requirement to Program Executive Office Soldier, which "began execution of the requirement through the LASSO [low altitude stalking and strike ordnance] program." COS/MOL at 4. In carrying out the LASSO program, the Army held an industry day in September 2023, which was attended by several firms interested in meeting the agency's requirement. The Army then issued a follow-up request for information (RFI) on October 13. *Id*. Both Mistral and AeroVironment responded to the RFI, with each firm proposing their respective solutions to the Army's loitering munitions requirement. *Id*. at 4-5. The agency toured multiple offerors' facilities around this same time to gain further information about their manufacturing capabilities. *Id*. at 5. The Army subsequently issued a draft request for proposals to multiple offerors, including Mistral and AeroVironment, for the LASSO program requirements. *Id*.

In August 2023, around the same time the Army was planning and initiating the LASSO program and gathering information as described above, the Department of Defense initiated the "Replicator program." *Id*. The objective of the Replicator program was "to field all-domain, attritable autonomous low-cost systems," with the intention of "fielding thousands of uncrewed systems by August 2025." *Id*. at 5-6. The Army selected the LASSO program "to support the [Department of Defense's] Replicator initiative and merged those efforts in early 2024." *Id*. at 6. With the requirements of the Replicator initiative dictating an August 2025 delivery date to meet the Department of Defense's first loitering munitions requirement, the agency states it was "required to accelerate the LASSO award and delivery schedule." *Id*.

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[1] The agency describes the history of the procurement in its combined Contracting Officer's Statement and Memorandum of Law (COS/MOL), which we largely rely on in the decision here when discussing this history.

[2] U.S. Army Futures Command is headquartered in Austin, Texas, and its purpose is to "ensure the Army and its [s]oldiers remain at the forefront of technological innovation and warfighting ability." Army Futures Command (AFC) Website, About AFC, https://www.army.mil/futures (last visited on December 11, 2024).

[3] The agency describes a loitering munition as a "day/night capable, lightweight, ground launched, semi-autonomous (*i.e.*, humans in the loop), lethal unmanned aerial system capable of destroying troops, armored vehicles, and tanks." COS/MOL at 4. It consists of an "All-Up Round (AUR), an optional Reconnaissance, Surveillance, and Target Acquisition asset (RSTA), and a Fire Control Unit (FCU)." *Id*. A loitering munition's discreet payload and unique capability delivers soldiers "the ability to abort against targets in a dynamic situation (*e.g.*, use of human shields), or prosecute targets that would have been deemed non-viable in the past due to the higher collateral damage associated with alternative munitions." *Id*.

Relevant Statutory and Regulatory Authorities

The requirements for Department of Defense procuring agencies to use other than competitive procedures are at 10 U.S.C. § 3204 and its implementing regulations, Federal Acquisition Regulation (FAR) subpart 6.3. The FAR prescribes seven exceptions to the general requirement that agencies use full and open competitive procedures for the procurement of property and services. *See* FAR 6.3. As relevant to the protest, the public interest exception states that "[f]ull and open competition need not be provided for when the agency head determines that it is not in the public interest in the particular acquisition concerned." FAR 6.302-7(a)(2). Invoking this exception comes with specific documentation and notification requirements. In this regard, the FAR requires a written determination and findings (D&F), made in accordance with FAR subpart 1.7, to be prepared by the Secretary of the Army (or other relevant agency head), authority for which cannot be delegated. FAR 6.302-7(c)(1). The FAR also requires written notification to Congress of an agency's determination to use the exception not less than 30 days before award of the contract. FAR 6.302-7(c)(2).

The fiscal year (FY) 2023 and FY 2024 National Defense Authorization Acts (NDAAs) amended the requirements for Department of Defense agencies' use of the public interest exception to full and open competition. The FY23 NDAA included "temporary authorizations" for "covered agreements" related to critical munitions and defense articles and support for Ukraine. In this regard, the FY23 NDAA provided that "a covered agreement may be presumed to be in the public interest for purposes of meeting the requirements of" 10 USC § 3204 and, accordingly, the implementing regulations contained in the FAR. James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263, § 1244, 136 Stat. 2395, 2844 (2022). The FY23 NDAA defined a "covered agreement" to include a contract, subcontract, transaction, or modification thereof: "(A) to build the stocks of critical munitions and other defense articles of the Department; (B) to provide materiel and related services to foreign allies and partners that have provided support to the Government of Ukraine; and (C) to provide materiel and related services to the Government of Ukraine." *Id*.

The FY24 NDAA added Taiwan and Israel, in addition to Ukraine, to the list of countries identified under the second and third types of covered agreements. National Defense Authorization Act for Fiscal Year 2024, Pub. L. No. 118-31, § 1242, 137 Stat. 136, 458, 459 (2023). In addition, the FY24 NDAA amended the definition of a covered agreement to also provide for the replenishment of stocks of critical munitions and defense articles. As a result of these changes, a covered agreement is defined as a contract, subcontract, transaction, or modification thereof: (1) to build or replenish the stocks of critical munitions and other defense articles of the Department; (2) to provide materiel and related services to foreign allies and partners that have provided support to Ukraine, Taiwan, or Israel; or (3) to provide materiel and related services to Ukraine, Taiwan, or Israel. *See id*.

The FY24 NDAA also relaxed for "covered agreements" only, the delegation authority limitation that ordinarily applies when invoking the public interest exception to full and

open competition and shortened the congressional notification period. As amended, the Secretary of the Army can now delegate authority to an officer "at or above" the grade of brigadier general, or a civilian office employee with a grade under the General Schedule that is comparable to or higher than the grade of brigadier general. Additionally, the requirement to provide Congress with 30 days notice before using the procedures was changed to 7 days. Pub. L. No. 117-263, § 1244. The temporary authorization to use these procedures was extended to September 30, 2028. Pub. L. No. 118-31, § 1242.

Sole-Source Contract Award

In January 2024, the Department of Defense issued a class deviation to the FAR[4] to implement the FY23 and FY24 NDAA temporary authorizations described above for "covered contracts."[5] Department of Defense Memorandum, Class Deviation--Temporary Authorizations for Covered Contracts Related to Ukraine, Taiwan, and Israel (2024). A covered contract had essentially the same definition as that prescribed in the NDAAs discussed above. The class deviation explained that "[c]ontracting officers may award a covered contract under the authority of FAR 6.302-7 without providing full and open competition," and that FAR subsection 6.302-7(b)--which provides that use of the public interest exception may be used when none of the other exceptions to full and open competition apply--is not applicable to awards made under this authority. *Id.*; *see* FAR 6.302-7(b).

The Army explains that "[a]s a result of the market research, and in response to changing [Department of Defense] requirements, the Army determined that it was in the public interest to award a sole source contract to AeroVironment using the temporary acquisition flexibilities provided in the FY23 NDAA, as modified by the FY24 NDAA." COS/MOL at 7. Accordingly, the Army prepared a D&F in June 2024 and a modified D&F in July 2024. *Id*. Both D&Fs provided that the Army intended to award AeroVironment a 5-year indefinite-delivery, indefinite-quantity (IDIQ) contract with a ceiling value of $990 million. *Id*. at 8. The D&F contained various representations

[4] A class deviation affects more than one contract action and allows an agency to use a policy, procedure, or practice in conducting an acquisition that is otherwise inconsistent with the FAR. *See* FAR 1.401, 1.404.

[5] The class deviation used the term "covered contract" instead of "covered agreement" as used in the NDAA. The class deviation defined the term "covered contracts" to mean "a contract or modification of a contract awarded by [the Department], or a subcontract or modification of a subcontract under a contract awarded by [the Department]." Department of Defense Memorandum, Class Deviation--Temporary Authorizations for Covered Contracts Related to Ukraine, Taiwan, and Israel (2024). There is no explanation in the record for why the class deviation used the term "covered contract" instead of "covered agreement" but the definition of "covered contract" in the class deviation is consistent with the definition of "covered agreement" in the FY24 NDAA. In this decision we use the two terms interchangeably.

explaining why the anticipated award was a covered contract for purposes of meeting statutory requirements and the requirements of the class deviation.

In this regard, the D&F stated that the contract would "build the U.S. Army's stocks of defense articles" and explained that defense articles are defined in the United States Munitions List as including anti-tank missiles and rockets, unmanned aerial vehicles, and fire control systems. AR, Tab 17, July 30 D&F at 2. The D&F also stated that the sole-source contract qualified as a "covered contract" because it would provide materiel and related services directly to Taiwan, Israel, and Ukraine, and to foreign allies and partners that have supported those three countries. *Id.* at 3. Because the sole-source contract qualified as a "covered contract," the D&F concluded that it may be presumed to be in the public interest and therefore the agency could use other than full and open competition procedures to award the contract. *Id*. at 4. On August 7, Congress received advance notice of the Army's intention to award the sole-source contract from the Deputy Assistant Secretary of the Army (Procurement). AR, Tab 21, Pre-award Notification to Congress at 2.

The Army awarded AeroVironment the IDIQ contract at issue here on August 26, 2024, and the first delivery order (DO) was issued on August 30. COS/MOL. at 9; *see* AR, Tab 2, AeroVironment IDIQ Contract at 2; AR, Tab 3 AeroVironment First DO at 2. On September 6, Mistral filed its protest with our Office challenging the award of the sole-source contract to AeroVironment. Subsequently, on September 20, the agency provided our Office with written notice that for urgent and compelling reasons it was overriding the automatic stay of contract performance otherwise required by the Competition in Contracting Act and our Bid Protest Regulations and therefore would allow AeroVironment to continue performance of the contract pending our resolution of the protest. *See* 4 C.F.R. § 21.6; Electronic Protest Docketing System No. 28 (agency notification of stay override pursuant to 31 U.S.C. § 3553(d)(3)(C)(i)(II)).

Protest Procedural History

In its initial protest, Mistral challenged the Army's award of the sole-source contract to AeroVironment on multiple bases. The protester argued that the agency improperly failed to publish a solicitation for the requirement to known prospective offerors. Protest at 7. The protester asserted that this error was especially problematic, given the history of the LASSO program and the extensive communications the agency held with Mistral (and other offerors) concerning Mistral's ability to provide a solution to the agency's loitering munitions requirement. *Id*. at 8.

Mistral also initially contended that the Army did not provide adequate support for awarding a contract to AeroVironment on a sole-source basis, pursuant to any of the exceptions to full and open competition contained in FAR subpart 6.3. Protest at 9-12. With regard to the public interest exception of FAR subsection 6.302-7, the protester argued that contrary to the terms of the subsection, the agency never prepared a D&F or provided Congress with notice as required. *Id*. at 9-10. Mistral also maintained that

the Army could not have reasonably justified the sole-source award under any of the other exceptions to full and open competition. *Id*. at 12.

On September 18, the Army filed a request for dismissal of the protest in its entirety. The agency argued that Mistral's allegations were based on factual inaccuracies, and thus failed to clearly state legally sufficient grounds of protest because the protester failed to address the particular authorities the agency relied on in awarding the contract. Req. for Dismissal at 2-3. Specifically, the agency explained that pursuant to the FY23 and FY24 NDAAs, Congress granted the Department of Defense temporary acquisition authorities that amended the procedures for awarding contracts using other than full and open competition under the public interest exception, and Mistral's protest failed to allege that the Army violated any of the requirements of the temporary acquisition authorities in making the award to AeroVironment. *See* Req. for Dismissal at 10-12; Pub. L. No. 117-263, § 1244.

In response, Mistral argued that it was only after the Army filed its request for dismissal that it learned of the agency's reliance on the cited authorities and modifications to the public interest exception to full and open competition contained in the FAR as the basis for awarding a sole-source contract to AeroVironment. *See* Resp. to Req. for Dismissal at 2. Accordingly, the protester filed a supplemental protest on September 30 challenging the sufficiency of the agency's D&Fs, which the agency produced as an exhibit accompanying its request for dismissal, in addition to raising other arguments concerning the sole-source contract award. Supp. Protest at 1.

Given the above facts, we find that Mistral's arguments from its initial protest are based on factual inaccuracies, and thus do not set forth a factually sufficient basis of protest and are dismissed. *See, e.g.*, *Xenith Group, LLC*, B-420706, July 14, 2022, 2022 CPD ¶ 184 at 3 (dismissing protest where the allegations are based on factual inaccuracies). However, the protest grounds raised by Mistral in its supplemental protest, which were based on information learned for the first time when the agency filed its request for dismissal, were timely filed and supersede the original protest grounds. Thus, our discussion below addresses only the arguments raised in Mistral's supplemental protest, timely filed on September 30.

DISCUSSION

Mistral challenges the Army's sole-source contract award to AeroVironment on multiple bases. In addition to arguing that its conduct of the sole-source contract award was reasonable and complied with statutory and regulatory requirements, the Army requests dismissal of the protest on two separate bases: (1) that the protest was untimely filed; and (2) that the protester is not an interested party to pursue its protest grounds. COS/MOL at 9-13. We address the requests for dismissal, which we deny, and the merits of the protest in turn below.

Requests for Dismissal of Supplemental Protest

In the agency report, the Army argues the protest should be dismissed as untimely because Mistral knew or should have known of the Army's intent to award the first round of LASSO contract to AeroVironment on a non-competitive basis. COS/MOL at 9. In this regard, the agency contends that the Department of Defense made an announcement in March 2024 of its intent to award a sole-source contract to AeroVironment, and that there were subsequently at least four additional public announcements concerning the Army's intention to award a sole-source contract throughout the spring of 2024. *Id*. at 10. The agency argues that because the protester did not diligently pursue potential protest grounds despite the public nature of these announcements and instead "passively waited" for the Army's award notice, its protest is untimely and should be dismissed. *Id*.

Second, the Army argues that Mistral is not an interested party to purse the protest because, even if the protest were sustained, Mistral could not meet the agency's requirements by the August 2025 deadline for the first round of loitering munitions. *Id*. at 13. In this regard, the agency contends that Mistral's proposed loitering munition lacked required certifications, its production facility lacked certain facility requirements, and additional production delays would result in Mistral's solution not being available for up to [DELETED] months, well past the August 2025 requirement date. *Id*. at 12.

We decline to dismiss the protest on either basis. First, while our Office has stated that a protester is required to diligently pursue potential protest grounds based on information learned that may form the basis of protest, we have also generally stated that a protester is only put on "constructive notice" of procurement actions when that information is conveyed through the government-wide point of entry (GPE). *Compare Phoenix Data Sec., Inc. et al.*, B-419956.200 *et al*., July 10, 2023, 2023 CPD ¶ 172 at 12 n.11 (explaining that information posted to the GPE puts an offeror on constructive notice of that information) *with Scaletta Armoring*, B-412302, Jan. 14, 2016, 2016 CPD ¶ 22 at 4 n.4 (explaining our Office cannot conclude that a protester should have known the agency's basis of contract award based on public information available from a source other than the GPE). Here, the Army argues that Mistral should have been aware of the agency's intent to award the contract to AeroVironment based on public information that was not conveyed through the GPE. Accordingly, we find this information insufficient to have put the protester on notice of the sole-source IDIQ contract at issue here.[6]

[6] We also note that Mistral's supplemental protest specifically challenges the sufficiency of the agency's D&F, executed pursuant to the procedures of FAR subpart 6.3 and as amended by the FY23 and FY24 NDAAs for use of the public interest authority exception to full and open competition. As noted above, this information only became available to the protester when the agency filed a request for dismissal of the initial protest on September 18. The protester timely filed its supplemental protest grounds challenging the agency's award decision in this regard.

Second, we find Mistral has sufficiently demonstrated it is an interested party to pursue its protest. Our regulations state that "an interested party may file a protest," and further define interested party as "an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract." 4 C.F.R. § 21.0, 21.1. The agency offers a declaration from a program official that states that Mistral would not be able to meet the agency's requirements in the timeframe required by the Army, and that accordingly, Mistral "could not have been awarded the protested contract even if the Army had used full and open competition." COS/MOL at 13.

However, the record also contains information from the LASSO program's industry day that at the very least casts some degree of doubt on this assertion. For example, the Army's industry day market research analysis stated that Mistral was a "viable vendor to meet the LASSO [] performance, lethality, and schedule requirements." AR, Tab 10, Army LASSO Market Research at 169. Furthermore, the agency explained that Mistral's proposed loitering munition solution was "technically mature," noting that Mistral is "currently manufacturing and delivering products to other [Department of Defense] customers"--including loitering munitions variants for U.S. Special Operations Command and the U.S. Marine Corps. *Id*. The agency has not explained how these statements can be reconciled with the claims by the program official that Mistral could not meet the agency requirements in the necessary time frame. Accordingly, and given the procurement history underlying this case, we find that Mistral meets the definition of interested party for purposes of pursuing its protest grounds here, and we therefore decline to dismiss the protest on this basis as well.

Merits of the Protest

Mistral argues that the Army's sole-source contract award to AeroVironment was flawed for three primary reasons: (1) the agency's D&F does not clearly and convincingly demonstrate that the public interest to full and open competition applies to this procurement; (2) while the public interest exception to full and open competition permits other types of competition, the agency's decision to award a sole-source contract utilizing this exception was improper when there are several alternative viable sources that could have competed under a limited competition; and (3) the contract awarded here goes beyond the scope of the types of contracts that can be awarded using this authority, as modified by the FY23 and FY24 NDAAs. Supp. Protest at 2-8.

The Army contends that its conduct of the procurement and award of the sole-source contract was reasonable and consistent with the relevant statute and regulations. The agency argues that the D&F clearly demonstrates that the contract for loitering munitions was a covered contract under each of the definitions provided by the FY23 and FY24 NDAAs. COS/MOL at 27-28. The agency further argues that the protester's arguments also ask our Office to conduct an "improper *de novo* review" of the agency's actions that goes beyond what is required by the statute, and that would otherwise "impose new obligations not contemplated by Congress." *Id*. at 31-32. Finally, the

agency contends that the protester "cites to no authority" to suggest that the agency should be prohibited from awarding the IDIQ contract at issue here. *Id*. at 32.

As a general matter, and as explained above, the Competition in Contracting Act requires procuring agencies to engage in full and open competition. 10 U.S.C. § 3201(a). There are, however, seven exceptions to the general requirement that permit agencies to engage in contracting without providing for full and open competition. The "public interest" exception, at issue here, permits an agency to use other than full and open competitive procedures when the head of the agency "determines that it is necessary in the public interest to use procedures other than competitive procedures in the particular procurement concerned," and further notifies Congress in writing of that determination not less than 30 days before the award of the contract. 10 U.S.C. § 3204(a)(7); *see also* FAR 6.302-7. If using this exception, the authorizing official must make a written determination and finding supporting use of the exception that "sets forth enough facts and circumstances to clearly and convincingly justify the specific determination made." FAR 6.302-7(c)(1), 1.704; *Sikorsky Aircraft Corp.*, B-403471, B-403471.3, Nov. 5, 2010, 2010 CPD ¶ 271 at 4.

Generally, our Office will review a D&F issued by an agency in support of the public interest exception to determine whether the D&F provides, on its face, a clear and convincing justification that the restricted competition furthers the public interest identified. We consider a protester's arguments that the D&F relies on facts that have no relation to the stated public interest, or that the D&F relies on materially inaccurate information. *Asiel Enterprises, Inc.*, B-408315.2, Sept. 5, 2013, 2013 CPD ¶ 205 at 5. We will not, however, sustain a protest based on the protester's disagreement with the conclusions set forth in the D&F. *Sikorsky Aircraft Corp.*, *supra*. at 5.

Furthermore, in construing the meaning of statutes, our Office will "begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 175 (2009); *see Curtin Mar. Corp.*, B-417175.2, Mar. 29, 2019, 2019 CPD ¶ 117 at 9. To this end, our Office applies the "plain meaning" rule of statutory interpretation. *See, e.g., Oracle America, Inc.*, B-416061, May 31, 2018, 2018 CPD ¶ 180 at 16.

As explained above, the FY23 and FY24 NDAAs modified the requirements for the Department of Defense's use of the public interest exception to full and open competition as prescribed by statute and in the FAR. These modifications granted "temporary authorizations" for more flexible acquisition procedures in response to world events and conflicts in which the United States has an interest, including events taking place with respect to Ukraine, Israel, and Taiwan. *See* Pub. L. No. 117-263, § 1244. In this regard, the NDAAs established that an agreement meeting the definition of "covered agreement" may be presumed to be in the public interest for the purpose of meeting the public interest exception to competition. *Id*. A "covered agreement" includes contracts: (1) to build or replenish the stocks of critical munitions and other defense articles of the Department of Defense; (2) to provide materiel and related

services to foreign allies and partners that have provided support to Ukraine, Taiwan, or Israel; or (3) to provide materiel and related services to Ukraine, Taiwan, or Israel. *See id*.; Department of Defense Memorandum, Class Deviation--Temporary Authorizations for Covered Contracts Related to Ukraine, Taiwan, and Israel (2024).

The plain, unambiguous language of the statutes is clear--there is a presumed public interest in building or replenishing stocks of defense articles and critical munitions, and providing materiel and services in support of Ukraine, Taiwan, and Israel and the foreign allies that have provided these countries with support. Accordingly, for contracts for these types of requirements, called "covered agreements" or "covered contracts," Congress granted Department of Defense agencies temporary authorization to use other than competitive procedures when conducting these procurements. Because Congress has expressly identified a public interest and prescribed flexibility in conducting these procurements, our review is limited to considering whether the execution of the D&F document establishes that the procurement at hand meets the definition of a "covered contract" as defined by the statute and implemented by regulation.

The record demonstrates the Army executed two D&F documents, one in June 2024 and one in July 2024. The agency explains that the later D&F revised the original to reflect that the Army "would not award any additional contracts at this time for loitering munitions," and to "slightly increase[] the required quantities [of loitering munitions]." COS/MOL at 8.

The July 2024 D&F stated that the Army would award AeroVironment an IDIQ contract for the procurement of required loitering munitions with a 5-year ordering period and a contract ceiling of $990 million. AR, Tab 17, July 30 D&F at 2. The document explains the "requirement will build the [Department of Defense]'s stocks of other defense articles, specifically loitering munitions." *Id*. The D&F described the requirement as [DELETED] all up rounds plus supporting assets for the Army, along with an additional [DELETED] all up rounds plus supporting assets for the Department of Defense. *Id*. The D&F also explained the Army anticipated foreign military sales of [DELETED] all up rounds plus supporting assets. *Id*. at 2-3.

As noted above, to support its determination to use the public interest exception to full and open competition, as amended by the FY23 and FY24 NDAAs, the D&F described the various findings made by the Army. The document explained that the AeroVironment contract for loitering munitions is a "covered contract" for multiple reasons. First, it stated that the contract "will build the U.S. Army's stocks of defense articles." *Id*. at 3. The document referred to the definition of "defense article" as prescribed by 22 C.F.R. § 120.31, which states a defense article means "any item or technical data designated" in 22 C.F.R. § 121.1; that section provides the United States Munitions List (USML). *Id*. at 3; 22 C.F.R. § 121.1. The D&F explained that the relevant defense articles for loitering munitions contained in the USML include "[a]nti-tank missiles and rockets"; "[u]nmanned aerial vehicles specially designed to incorporate a defense article"; and "[f]ire [c]ontrol . . . systems." *Id*.

Next, the document stated that the contract "is also a covered contract because it will provide materiel and related services to foreign allies and partners which have supported Ukraine, Taiwan, or Israel, and will provide materiel and related services to Taiwan, Ukraine, or Israel." *Id*. at 3. The document explained that because the contract meets the definition of "covered contract," it may be presumed to be in the public interest; and that application of that presumption to this specific procurement "expedites contract award and thereby advances important [Department of Defense] and national objectives related to building the [Department of Defense]'s inventory and providing effective support to Ukraine, Taiwan, or Israel." *Id*. at 4.

We find the Army's D&F sufficiently demonstrates that the Army's use of the public interest exception to full and open competition was in accordance with the prescribing statute and regulations. In this regard, the D&F supports the agency's conclusion that the loitering munition requirement constituted a "covered contract." First, over [DELETED] of the units were for either the Army's requirements, or the Department of Defense at large. The agency explained that these units were to build up or replenish stocks of defense articles, which the agency defined using existing regulations.[7] The D&F sufficiently explained why the loitering munitions being procured here are defense articles, and because the document otherwise explained the contract will "build the [] Army's stocks" of these munitions, we find no basis to disturb the agency's conclusion in this regard. *Id*. at 3.

The Army also explained that the acquisition of the loitering munitions falls within the definition of a "covered contract" because it will provide materiel and related services to foreign allies and partners that have supported Ukraine, Taiwan, or Israel, and will provide materiel and related services to those countries themselves. AR, Tab 17, July 30 D&F at 3. While this representation included the units identified for use by the Army and Department of Defense, it also covered the additional [DELETED] units of loitering munitions that were for anticipated foreign military sales. Though Mistral argues that the units designated as foreign military sales were not given explicit final destinations, and thus cannot meet the definition of a covered contract, the agency explains that specific destinations and quantities were not included in the unclassified D&F "to preserve operational security for U.S. and allied and partner nation militaries." COS/MOL at 28.

Despite not listing exact destinations for the loitering munitions, the D&F does explicitly state that the units will be provided to either foreign allies which have supported Ukraine, Taiwan, or Israel, or to Ukraine, Taiwan, or Israel themselves. AR, Tab 17, July 30 D&F at 3. We find this statement, and the agency's reasons for withholding specific destinations of the materiel and services, to be reasonable, and that the D&F otherwise demonstrates that this portion of the requirement meets the definition of "covered contract," and was thus entitled to the presumption to be considered in the public interest. This protest ground is denied.

[7] The statute did not define the term "defense articles." We find the agency's use of existing regulations, and their application to the procurement here, is reasonable.

Regarding Mistral's other two arguments, we find the Army's sole-source contract award did not violate statute or regulation. Rather, the protester asks our Office to require the agency to perform additional analysis not required by statute and otherwise disagrees with the policy enacted by Congress through the FY23 and FY24 NDAAs. The plain language of the NDAAs gives Department of Defense agencies broad, though temporary, authority to conduct procurements for certain materiel and services under more relaxed and streamlined procedures. It is not in our Office's purview to object to such language or question the intent of policymakers, rather, in interpreting statutes, where the statutory language provides an unambiguous expression of the intent of Congress, our inquiry ends there. *See Technatomy Corp.*, B-405130, June 14, 2011, 2011 CPD ¶ 107 at 5 n.5.

As stated above, Mistral argues that the agency's decision to award a sole-source contract utilizing the public interest exception was flawed when there existed a limited number of alternative viable sources that could have competed for the loitering munition requirement under a limited competition. Supp. Protest at 5. The protester argues that the D&F does not prescribe the agency's basis for restricting the competition to AeroVironment alone, and that on this basis, the protest should be sustained. *Id*. at 6.

Mistral cannot demonstrate that the Army was required--by statute, regulation, or otherwise--to make any determination concerning the degree to which it should have restricted full and open competition. The statute and implementing regulations permit the use of other than full and open competition for covered agreements, which are presumed to be in the public interest; we find no basis in law or regulation that would require an additional analysis regarding the extent to which competition should be limited.

Furthermore, Mistral's argument that the D&F is "completely silent" with respect to the reasons for awarding a sole-source contract, as opposed to some form of limited competition among the potentially qualified offerors identified in the early stages of the LASSO program, is contradicted by the record. In this regard, the D&F stated that the planned award to AeroVironment "expedites contract award and thereby advances important [Department of Defense] and national objectives related to building the [Department of Defense]'s inventory and providing effective support to Ukraine, Taiwan, or Israel." AR, Tab 17, July 30 D&F at 4. We find that expediting the procurement by awarding a sole-source contract in this context, given the national security objectives and response to world events identified by the agency and Congress, is a reasonable exercise of the authority prescribed to the agency by Congress and was documented by the agency in its D&F. Accordingly, this protest ground is denied.

Mistral argues that the contract awarded by the Army goes beyond the scope of the types of contracts that can be awarded using this authority, as modified by the FY23 and FY24 NDAAs. Supp. Protest at 6-7. In this regard, the protester contends that "[i]t is difficult to square" the temporary nature of Congress's authorization with a 5-year contract for the entirety of the agency's requirements for loitering munitions. *Id*. at 6.

However, nothing in the statute addresses the scope of a covered agreement, or limits the size or period of performance of a contract that can be awarded under this authority. By the plain language of the statute, a covered agreement includes a contract, subcontract, transaction, or modification thereof. Pub. L. No. 117-263, § 1244. Congress could have--but elected not to--use more specific, narrowing language that otherwise dictated the type and scope of procurement vehicles through which Department of Defense agencies could execute procurements related to Ukraine, Taiwan, and Israel. Accordingly, the protester has not shown that the agency violated the statute and its implementing regulations in awarding the sole-source IDIQ to AeroVironment.[8]

Mistral also argues that the contract is beyond the scope of the NDAAs' authorization because of the "substantial post-award testing and evaluation" required for the loitering munitions, as evidenced in part by the first article testing requirement of AeroVironment's IDIQ contract. Supp. Comments at 21. Mistral contends that the development and testing components of the contract are outside the scope of the NDAA's authority. *Id.*

The agency responds that the testing and evaluation contract line item numbers contemplated by AeroVironment's IDIQ contract, such as normal field service support and lot acceptance testing, fall within the scope of the services permitted by the statute in defining a covered contract. COS/MOL at 35. The agency maintains that these "non-developmental" services are within the scope of the "related services" authorized by the NDAA. *Id.* The agency contrasts these services with the substantial research, development, and testing that it alleges Mistral would have to undergo for its own solution and which the agency contends are not within the scope of the NDAAs. *See id.*

Based on our review of the record, we find no basis to sustain this protest ground. Mistral's argument is based primarily on the agency's statement that substantial testing and development--like that allegedly required for Mistral's solution--would fall outside the scope of the temporary authority provided for in the NDAAs. However, the agency distinguished this more involved research and development from the testing included in the sole-source contract, which is more limited and would fall under the "related services" referenced in the NDAA and implementing regulations. Mistral has not shown that this distinction is incorrect or that testing services such as first article testing cannot be considered as "related services" under the relevant statutes and regulations. Accordingly, this protest ground is denied.

In sum, under the unique facts and circumstances of this procurement, Congress prescribed temporary authorization for Department of Defense agencies to conduct

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[8] Furthermore, we note that the IDIQ contract awarded here has a ceiling value of $990 million. As the agency maintains, this amount is only a ceiling, and, in fact, the minimum order requirement for this contract has already been met, as the first delivery order placed under the IDIQ on August 30 demonstrates. *See* AR, Tab 3 AeroVironment First DO at 2.

procurements using flexible acquisition procedures. This congressional intent is evident from the plain language of the FY23 and FY24 NDAAs. The agency's actions in awarding a sole-source contract for loitering munitions were consistent with the statute and its implementing regulations, and we find the D&F prepared by the agency is otherwise sufficient to demonstrate that the Army's use of the authority was proper for this procurement. Accordingly, we find no basis to object to the agency's actions in making the sole-source award to AeroVironment.

The protest is denied.

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