IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

ORBITAL ATK, INC. and SPACE LOGISTICS LLC 45101 Warp Drive, Dulles, VA 20166	)	
Plaintiffs,	)	**Case No.** 1:17cv163 (LMB/IDD)
v.	)	
DR. STEVEN H. WALKER, in his official capacity as Acting Director of the Defense Advanced Research Projects Agency; and the DEFENSE ADVANCED RESEARCH PROJECTS AGENCY 675 North Randolph Street Arlington, VA 22203-2114	)	**COMPLAINT**
Defendants.	)	

INTRODUCTION

1. Plaintiffs Orbital ATK, Inc. and Space Logistics LLC ask this Court to prevent the Defense Advanced Research Projects Agency from violating federal law and thereby directly and significantly harming Plaintiffs. DARPA unlawfully intends to waste hundreds of millions of U.S. taxpayer dollars to develop robotic satellite servicing technology for which DARPA has admitted there is no present U.S. Government need and that NASA and the U.S. private sector – specifically Plaintiffs – are already developing. DARPA then intends to give away this technology to a foreign-owned company for that company's sole commercial use. DARPA's program is in direct violation of multiple provisions of the 2010 National Space Policy and thus constitutes a violation of the Administrative Procedure Act. Plaintiffs are entitled to declaratory relief and an injunction to prevent Defendant from taking any action in furtherance of this

unlawful program.

2. In 2010, then-President Obama issued an Executive Order (Presidential Policy Directive #4, June 29, 2010), titled "National Space Policy of the United States of America." (Exhibit 1). This directive reiterated the long-standing principles and goals of our national space programs and mandated that executive agencies comply with the provisions of the policy designed to further those goals. The directive emphasizes the need for a robust commercial space sector, along with careful planning and wise investment by United States government agencies to protect domestic commercial activities in space development.

3. Specifically, the National Space Policy mandates that all departments and agencies, *inter alia*:

- "Purchase and use commercial space capabilities and services to the maximum practical extent when such capabilities and services are available in the marketplace and meet United States Government requirements;" . . .
- "Develop governmental space systems ***only*** when it is in the national interest ***and*** there is no suitable, cost-effective U.S. commercial or, as appropriate, foreign commercial service or system that is or will be available;" . . .
- "Refrain from conducting United States Government space activities that preclude, discourage, or compete with U.S. commercial space activities, unless required by national security or public safety;" . . . (p.10)(emphasis added)

As explained below, DARPA is pursuing a program that violates each of these mandates.

4. For several years, DARPA has explored the possibility of demonstrating robotic satellite servicing technology in space. Until early 2016, DARPA discussed using a consortium approach, in which various commercial partners would work with DARPA to develop and demonstrate the technology, which would then be available equally to all participants, to maintain fairness in the marketplace. Then, in March 2016, DARPA apparently changed course. DARPA revealed in informal discussions with Plaintiffs that it was instead considering pursuing

the program with a single participant, rather than an industry consortium. Under this new approach, DARPA would pay to develop the robotic technology, pay to modify a spacecraft platform, pay to launch the technology into orbit, and then (following a brief demonstration period) transfer ownership of the significantly subsidized spacecraft – along with the DARPA funded robotic technology – to the single participant for its sole commercial use. In May 2016, DARPA initiated a bid solicitation for a program structured according to this updated approach, which is in direct violation of the National Space Policy, including each of the above-cited provisions.

5. Specifically, DARPA requested proposals to accomplish a program that will cost taxpayers hundreds of millions of dollars to develop robotic servicing of geosynchronous satellites, ***despite admitting that there is no present U.S. Government need for such capabilities***. Moreover, DARPA is doing this even though it understands that NASA has already independently committed significant funds to develop very similar technology, through normal procurement channels rather than the "other transaction" approach chosen by DARPA here and with an expressed intent to avoid disrupting the commercial market. And, most importantly, Orbital ATK fully committed to – and directly communicated to DARPA – the private development and commencement of its own commercial program to achieve satellite mission extension and robotics capabilities sooner than contemplated by DARPA's program. Thus, DARPA seeks to create its own government-funded technology that will compete – unfairly and illegally – with Orbital ATK's privately developed commercial capability.

6. Under DARPA's program, a single private company will loan DARPA the hosting satellite platform while DARPA, using taxpayer dollars, will pay for (among other things): the development of the robotics technology, the launch of the satellite into orbit, and satellite platform modifications and systems engineering. Following a short demonstration period,

DARPA will then transfer ownership of the entire satellite – including the Government-funded robotics payload – to the private company for its sole commercial use, so that it can profit by charging both private-sector and government customers for the use of the robotics capability paid for and previously owned by DARPA. All DARPA will receive in exchange, in addition to the demonstration, is some ill-defined "consideration" that apparently may consist of nothing more than training of DARPA personnel or guaranteed pricing for potential future missions DARPA will buy from this company, to be performed using the very robotics payload DARPA developed using taxpayer money.

7. This approach will seriously undermine market competition to produce this capability and thereby weaken both the commercial space sector and the U.S. Government's ability to benefit from private innovation and investment. Orbital ATK has repeatedly warned DARPA of these manifest – and completely avoidable – pitfalls with its chosen approach, but DARPA has refused to turn from its illegal course of conduct. Orbital ATK is left with no choice but to seek this Court's intervention to provide declaratory and injunctive relief to Orbital ATK, and the American taxpayers, from this misguided, wasteful and unnecessary project.

JURISDICTION AND VENUE

8. Because this action arises under the federal Administrative Procedure Act ("APA"), 5 U.S.C. § 706, this Court has federal question jurisdiction under 28 U.S.C. § 1331.

9. Venue is proper in this Court under 28 U.S.C § 1391(e)(1) because Plaintiffs' principal place of business is in this District. Moreover, a substantial part of the events giving rise to this action occurred in this District, and Defendant resides in this District.

10. Venue is proper in this Division under this Court's Local Rule 3(c), because Plaintiffs' principal place of business is in this Division.

PARTIES

11. Plaintiff Orbital ATK, Inc. ("Orbital ATK") is a U.S.-based global leader in aerospace and defense technologies; it designs, builds and delivers space, defense and aviation-related systems to customers around the world both as a prime contractor and as a merchant supplier. Orbital ATK has more than 12,000 employees, nearly all of whom are located in the U.S. Space Logistics LLC ("Space Logistics"), a wholly-owned U.S. subsidiary of Orbital ATK, is an active and fully funded commercial satellite servicing company.

12. Orbital ATK is incorporated under the laws of the state of Delaware, with its principal place of business at 45101 Warp Drive, Dulles, VA 20166.

13. Space Logistics LLC is incorporated under the laws of the state of Delaware, with its principal place of business at 45101 Warp Drive, Dulles, VA 20166.

14. Defendant Dr. Steven H. Walker is the Acting Director of the Defense Advanced Research Projects Agency. Dr. Walker is sued in his official capacity.

15. Defendant Defense Advanced Research Projects Agency is an executive agency of the United States within the meaning of the APA, headquartered at 675 North Randolph Street Arlington, VA 22203-2114.

FACTUAL BACKGROUND

Orbital ATK Leads the Way in Developing Commercial In-Space Robotics Satellite Servicing Technology

16. Orbital ATK has for years been a pioneer in the development of "in-space satellite servicing" – the design, manufacture, and operation of spacecraft that can rendezvous and dock with low-orbit and geostationary orbit satellites and extend their useful lives by many years. Since 2004, Orbital ATK's predecessor entity ATK has contracted with NASA to design and develop robotic tools for in-space satellite servicing. And, since 2008, ATK has invested tens of millions of dollars to develop in-space satellite servicing technology for commercial satellites.

17. Orbital ATK continues to develop the Mission Extension Vehicle (MEV), a satellite life extension service for Geosynchronous Earth Orbit[1] (GEO) satellites. From the outset, ATK has remained committed to developing an array of space logistics services based on robotics, to include construction and assembly, refueling and repair. This commitment continues with Orbital ATK.

DARPA's Interest in Pursuing On-Orbit Robotic Satellite Servicing

18. In 2011, DARPA announced the Phoenix program, which aimed to explore potential in-space satellite servicing capabilities. As initially conceived, the Phoenix project sought to utilize DARPA's existing robotic arm technology (FREND), along with developing new technologies, to demonstrate the ability to harvest and re-use valuable components from retired, nonworking GEO satellites.

19. Recognizing ATK's leadership in the on-orbit satellite servicing field, in 2012 DARPA contracted with ATK to modify an existing satellite bus[2] for use in the Phoenix demonstration.

20. Upon information and belief, by 2013, DARPA's stated vision for the Phoenix program changed, from a demonstration mission to a long-term operation with additional capabilities, and the Phoenix program became the Robotic Servicing of Geospatial Satellites (RSGS) program. DARPA indicated its aim was no longer to repurpose an existing Government owned bus, allegedly because the repurposed bus would not provide sufficient life to support

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[1] Geosynchronous Earth Orbit is an orbit about the Earth of a satellite with an orbital period that matches the rotation of the Earth on its axis. A satellite in such an orbit is at an altitude of approximately 35,786 km (22,236 mi) above mean sea level.

[2] A satellite bus is the infrastructure of a spacecraft, including the propulsion power, operating power, internal communication system and the physical structure, providing locations for the payload (typically space experiments or instruments).

purported Government satellite servicing needs.

Orbital ATK Continues to Develop Satellite Servicing Technology Throughout 2015

21. On April 29, 2014, ATK's parent company, Alliant Techsystems Inc., announced that it was going to merge with Orbital Sciences Corporation ("Orbital"). Orbital was an established manufacturer of commercial GEO satellites and other complex spacecraft, with strong relationships with the major satellite operators who were the potential customers for on-orbit servicing technology. Orbital was also a company with a proven track record in space-based robotic spacecraft servicing, such as rendezvous and proximity operations, having already performed such operations pursuant to an ongoing contract to deliver cargo to the International Space Station using its Cygnus spacecraft.

22. The merger closed on February 9, 2015, making Orbital Sciences Corporation a wholly owned operating subsidiary of the newly named Orbital ATK, Inc. Subsequently, in April 2016, Space Logistics LLC, another wholly owned subsidiary, was created to develop and manage Orbital ATK's space logistics business.

23. Also in 2015, NASA continued to examine the possibility of on-orbit satellite servicing. NASA conceived of what became the Restore-L program, a project to deploy a robotic spacecraft capable of refueling and servicing an operational satellite. While NASA was focused on satellites in Low Earth Orbit[3] (LEO), rather than GEO, the other technical aspects of the project were nearly identical to DARPA's RSGS efforts. As noted above, since 2004 ATK had been working with NASA to develop robotics tools for in-orbit servicing technology.

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[3] A low Earth orbit (LEO) is an orbit around Earth with an altitude between 160 kilometers (99 mi) and 2,000 kilometers (1,200 mi). All manned space stations to date, as well as the majority of satellites, have been in LEO.

24. While no RFP issued from DARPA regarding the RSGS project in 2015, on information and belief DARPA continued to discuss its plans with members of the commercial space industry. In May 2015, DARPA circulated a proposal for a consortium of companies to partner with DARPA to pursue RSGS technology.

25. As part of its proposal, DARPA attempted to provide an explanation for why the original Phoenix concept of a demonstration of the existing FREND technology was insufficient, stating ". . .the RSGS program must go beyond a demonstration alone. Real-world servicing missions, requested by operators of satellites on orbit, will have a significant impact on the aerospace industry."

26. There are two potential customers for such services: Government operators and commercial operators. Orbital ATK was clear to DARPA that satellite life extension was the only existing commercial need sufficient to justify the investment required to support a business case. The only other potential customers were government agencies with an existing or imminent need for such a capability. Orbital ATK asked DARPA to explain what long-term commitments it had from U.S. Government entities to use DARPA's FREND robotic payload for satellite servicing missions.

27. DARPA admitted there were no such Government commitments:

> "What demo or longer term business commitments does DARPA have from U.S. government entities to use the FREND robotic payload for servicing?"
>
> "***There are no existing commitments***. We expect them to develop as the RSGS program is approved, moves forward toward flight, and becomes a part of various space architectures being developed, such as at SSDP. ***We view the formation of a consortium as a way of catalyzing such commitments, as the relevant agencies will also be part of the consortium.*** You are obviously aware of the increased emphasis on the protection of US GEO assets. We believe that this will result in a strong desire to use the servicer in support, particularly by providing protective payloads to legacy spacecraft on orbit." (emphasis added)

28. Thus, upon information and belief, while continuing to press forward with its RSGS

program, DARPA admitted in writing not only that there was no present U.S. Government request for such capability, including no stated national security need, but in fact that DARPA apparently seeks to introduce its project in part to generate potential interest.

29. Meanwhile, NASA proceeded with plans for its Restore-L program. Unlike DARPA, NASA was sensitive both to the potential for disruption of the commercial satellite services market and the substantial redundancy between its program and DARPA's notional RSGS program.

30. The minutes of the March 2016 Technology, Innovation, and Engineering ("TI&E") Committee of the NASA Advisory Council reflect NASA's candid assessment of the relationship between DARPA's RSGS, Restore-L, and commercial efforts to develop the same technology (emphasis added throughout):

- "Dr. Ballhaus asked the TI&E members to think about the message they wanted to send through the NAC to the NASA administrator. Mr. Neyland said that he has always appreciated the benefits of satellite servicing, so he was glad to see Restore-L. **However, with regard to this project, he questioned the evident lack of a relationship between NASA and the Defense Advanced Research Projects Agency (DARPA), which is doing a parallel mission with the same funding in the same timeframe, using the same hardware, the same software, and the same contractors. The two efforts are completely parallel.** Mr. Jurczyk said that the difference is that NASA will service a government-owned satellite in LEO, while DARPA is visiting a satellite in Geosynchronous Earth Orbit (GEO). There will be a meeting among the various players at the White House. **NASA's executive management has tried to establish a collaboration with DARPA, but that agency is not amenable to working together.** There are factors on both sides that have driven this, but NASA continues to seek an integrated effort."

- **"Mr. Jurczyk continued, noting that there are industry approaches to satellite servicing, and the NASA effort must take care to not disrupt potential commercial markets.** He advised TI&E to articulate their concerns and issues. He did caution that STMD is not going into the business of satellite servicing."

31. Thus, by March 2016, NASA appreciated what Orbital ATK had been attempting to help DARPA see for more than a year: DARPA's RSGS project was redundant with other

efforts both in government and the private sector, and DARPA's action risked improperly harming a naturally developing commercial market for this technology, which would benefit all parties. In DARPA's case, Orbital ATK's concerns are more acute because of DARPA's stated plan to transfer ownership and commercial use of the technology to a single competitor.

DARPA Admits Its Goal is to Create Competition With Orbital ATK

32. During the Satellite 2016 conference, which was held in Washington D.C. in March, 2016, and the National Space Symposium, held in Colorado Springs, Colorado in April, 2016, DARPA made statements at various panels and discussions regarding the imminent announcement of DARPA's RFP for the RSGS project.

33. In the context of discussions regarding these respective robotics servicing programs, DARPA told Orbital ATK executives that DARPA sees its role as "creating competition within the industry," or words to that effect. The import of these comments became clear when DARPA announced the structure of the RSGS program.

34. It appears from such comments that DARPA has not considered that in this instance, its chosen program structure is not designed to create competition ***among*** the commercial space industry with fairly and equally available procurements. Rather, DARPA's acquisition strategy is to develop RSGS, launch it, demonstrate it for less than a year, then hand RSGS off to a sole commercial provider, thereby providing a subsidy worth hundreds of millions of dollars to a single service provider in the commercial marketplace. Thus, DARPA's RSGS program, as conceived and presented, will in effect use substantial taxpayer funds ***to subsidize a single competitor with*** private commercial space companies in the industry, in direct violation of the National Space Policy.

DARPA Issues an RFP That Violates National Space Policy

35. During the discussions between Orbital ATK and DARPA in August 2015, DARPA

assured Orbital ATK that a draft RFP would be provided for review in the event that Orbital maintained its concerns about the RSGS project.

36. By May 2016, Orbital ATK had announced that it had committed up to $200 million to its MEV project, with the first MEV slated for launch in late 2018.

37. As part of its RSGS program to develop and test robotic servicing technology – and without providing to Orbital ATK the draft RFP it had promised to provide – on May 18, 2016, DARPA issued a formal RFP.

38. DARPA's proposal will effectively use taxpayer funds to establish one company in a dominant position over all other competition. This purposeful decision to provide a private entity with a such a massive financial and technological boost in a developing market is directly contrary to various provisions of the 2010 National Space Policy, which explicitly states: "To promote a robust domestic commercial space industry, departments and agencies shall:

> "Purchase and use commercial space capabilities and services to the maximum practical extent when such capabilities and services are available in the marketplace and meet United States Government requirements;
>
> . . .
>
> "Develop governmental space systems ***only*** when it is in the national interest and there is no suitable, cost-effective U.S. commercial or, as appropriate, foreign commercial service or system that is or will be available;
>
> . . .
>
> "Refrain from conducting United States Government space activities that preclude, discourage, or compete with U.S. commercial space activities, unless required by national security or public safety;" (p. 10)(emphasis added)

39. Thus, consistent with DARPA's statements – and inconsistent with the National Space Policy – DARPA will provide hundreds of millions of dollars of services and equipment to a single competitor, in turn providing that competitor with an insurmountable taxpayer funded subsidy that will unfairly and unnecessarily harm any other company's development of private on-orbit robotic servicing technology.

40. The structure of the program reflected in the RFP is as follows:

a. DARPA is contracting for a nine-month demonstration of the on-orbit satellite servicing capability of a robotic servicing vehicle (RSV);

b. DARPA will be responsible for updating its FREND technology and providing the RSV;

c. The successful commercial bidder must provide DARPA with the bus needed to deliver DARPA's robotic payload into GEO. DARPA will pay $15 million towards the cost of modifying the bus to accommodate DARPA's robotic payload;

d. DARPA will fund the launch;

e. Following a nine-month demonstration of the servicing capability, DARPA will deliver the RSV to the private company for its sole commercial use.

41. DARPA's vision is unabashedly unfair and anti-competitive:

> "The end state of the RSGS program is to be a U.S. commercially-owned and -operated robotic servicing vehicle, which carries the Government-furnished robotic payload. Accordingly, the satellite bus will not be purchased by the Government, but instead it must be provided and continuously owned by the Partner selected under this Solicitation. **The commercial owner will be able to leverage Government contributions**, including the development, manufacture, integration and testing of the robotic payload and its advanced automation and payload mission management software; participation in integration of the payload and bus; a launch vehicle to deliver the RSV to GEO or to Geostationary Transfer Orbit (GTO); development of a terminal for the mission operations center that enables both simulation of proposed servicing missions and teleoperation control of the RSV; extensive operational support during the operator qualification, on-orbit checkout, and demonstration phases of the mission; and potentially the provision of some milestone-based payments. **In exchange for some consideration to be proposed by the Partner, the use of the Government-furnished robotic payload will be made available to the Partner (after completion of Government demonstration tasks) for follow-on commercial operations."** (emphasis added)

42. DARPA not only allows, but fully expects, the contract awardee to "leverage" taxpayer funds for its own profit. The awardee will "own and operate the vehicle for several years while offering fee-for-service operations to GEO satellite operators, including the U.S.

Government." DARPA further explains that it "anticipates that revenues from RSV servicing operations would be more than adequate to cover the costs of ongoing operations . . ."

43. The "equivalent value" consideration DARPA seeks for giving the awardee this technology is undefined, but "could include: assured pricing for future missions servicing Government clients; the agreement to perform robotic experiments for Government clients; provision of operational data and lessons learned to the Government; training of Government personnel; or other offers consistent with the Partner's business case. The Government is open to all reasonably proposed consideration packages."

44. Thus, upon information and belief, factoring in the cost of developing the RSV and paying to launch the bus and payload in GEO orbit, the project will cost the Government hundreds of millions of dollars, and correspondingly allow the commercial manufacturer to avoid equivalent development costs. The company that merely lends DARPA a bus (for which it will receive $15 million towards necessary adjustments) will not only get to keep its bus, but receive exclusive ownership of the government's latest RSV technology, the use of which it will sell to commercial and government customers.

Orbital ATK Renews Its Objections to Commercial Interference by DARPA

45. On June 22, 2016, Mr. David Thompson – the President and CEO of Orbital ATK – wrote a letter to DARPA expressing "Orbital ATK's serious concerns about the approach DARPA is taking in its RSGS program, and suggesting several ways that these concerns can be addressed."

46. Mr. Thompson cited some of the express provisions of the National Space Policy being violated by the RSGS program, and detailed both the unfair advantage that DARPA would provide to the chosen competitor as well as the severe harm the program would have on the investment in Orbital ATK's MEV system.

47. At the same time, Mr. Thompson acknowledged DARPA's legitimate role in advancing national space capabilities and provided three different alternative proposed approaches to DARPA's RSGS program that would satisfy the legitimate goals in a manner consistent with the National Space Policy.

48. Mr. Thompson also requested an in-person meeting to further discuss a way forward.

DARPA Refuses to Address Orbital ATK's Objections

49. DARPA claimed that a response to Mr. Thompson's letter "would be inappropriate" and refused Mr. Thompson's invitation for an in-person meeting.

50. Following receipt of DARPA's refusal to meet with Mr. Thompson, Orbital ATK executives attempted to secure a meeting with DARPA and the Department of Defense to provide additional information in support of Orbital ATK's objections and work cooperatively to remedy the serious problems with DARPA's chosen approach. For example, between June and December 2016, DARPA agreed to – and then cancelled – two separate in-person meetings with Edward Fortunato, Orbital ATK's Senior Vice President for Government Relations. During an Orbital ATK meeting with the Under Secretary of Defense for Acquisition, Technology and Logistics (ATL), one of the civilian staffers present refused to allow any discussion with the Under Secretary about the program. Repeated attempts to meet with the other Department of Defense officials, particularly in the office of the Assistant Secretary of Defense for Research and Engineering (R&E), were declined and the subject matter was not allowed to be discussed.

51. In an effort to gain additional information from DARPA, specifically to better understand DARPA's purported governmental need for the capabilities described in the RSGS program, Orbital ATK attended the informational meeting regarding the RSGS solicitation and submitted questions about the program. DARPA repeatedly admitted, in its binding answers to

the written questions it received, that there is no present Government need for the RSGS capabilities contemplated by DARPA's program (emphasis added):

> Q: How many government missions does DARPA estimate per year?
>
> A: **At this time, no USG agencies have expressed a need for servicing of their GEO assets.** DARPA will invite the partner to servicing discussions with government agencies as the RSGS program progresses.
>
> Q: Will DARPA be able to provide bidders an understanding of the USG assets with servicing requirements for planning purposes?
>
> A: **DARPA is presently unaware of any requirements for servicing USG GEO spacecraft**. It is our understanding that studies that could lead to such requirements are being initiated by other agencies.

52. This is unsurprising because, as Orbital ATK has repeatedly explained to DARPA, satellite life extension is the only existing commercial need sufficient to justify a business case. Yet DARPA's RSGS program expressly disclaims any commitment to life extension, as the RFP explains. "The DARPA RSV is not intended as a life extension vehicle, but rather one that provides services uniquely enabled by dexterous robotic operations. However, placing DARPA-developed advanced robotics on a commercial vehicle designed for life extension will be entertained under this solicitation. Life extension services would be complementary to the advanced robotic capabilities DARPA proposes to enable. Life extension-specific tools and systems would need to be developed by the partner." This explains the present lack of a Government customer and makes DARPA's insistence on proceeding with the RSGS program, notwithstanding this lack of a current Government need even more vexing.

53. These answers further demonstrate the legitimacy of Orbital ATK's objections and the arbitrary and capricious nature of DARPA's program. In 2011, the Phoenix program was poised to demonstrate the capabilities of the FREND arm for in-orbit servicing with minimal cost to the government by using an existing bus owned by DARPA. That program was completely

reimagined based on the alleged need for additional capabilities that a demonstration would be insufficient to support. Now, five years later, DARPA has returned to the idea of merely providing a nine-month demonstration (of a service DARPA concedes that there is no present U.S. Government need for) but at a cost of hundreds of millions of dollars.

54. After DARPA closed every other avenue of communication, Orbital ATK had no choice but to reiterate its objections in a counter-proposal to the RSGS satellite bus RFP.

55. On July 5, 2016, Orbital ATK submitted its counterproposal to DARPA. After again explaining how the program as constituted conflicts with National Space Policy and would seriously distort the commercial market for the very technology DARPA claimed was crucial to the U.S. space industry, Orbital ATK offered three alternative approaches that would save the Government money and achieve DARPA's stated objectives.

56. Approach 1 consisted of ground based testing of the FREND robotic arm, followed by transfer of the technology to all interested U.S. companies for fair and equal commercial development.

57. Under Approach 2, DARPA would fund development, production and testing of the RSGS technology as a "hosted payload" on a commercial satellite, but not transfer ownership to, or subsidize the launch costs of, a single private operator.

58. Under Approach 3, DARPA would conduct the RSGS program for government-only missions but not transfer ownership of the satellite to a commercial operator.

59. None of these approaches were contemplated by, let alone did they comply with, DARPA's RFP. Orbital ATK's purpose was not to submit a compliant bid to secure the contract, because it believed that no such contract should be issued. On the contrary, with all other avenues of communication with DARPA foreclosed, Orbital ATK viewed this as its only option

to continue the dialogue with DARPA and hoped that its resubmitted objections would prompt a response from DARPA that either addressed the substance of Orbital ATK's concerns or, at a minimum, provided additional information regarding any supposed justification for the project.

DARPA Requests Additional Information from Orbital ATK, But Fails to Justify the Program or Address Orbital ATK's Objections.

60. Following Orbital ATK's objections, on July 14, 2016 DARPA asked Orbital ATK to submit a more detailed proposal.

61. In response, on September 9, 2016, Orbital ATK submitted an updated counter-proposal, which reiterated that the program lacked "a credible and financeable commercial or government requirement" and was "not in compliance with the U.S. Space Policy." Orbital ATK then provided more detail regarding Orbital ATK's second counter proposal – that DARPA change the program to one involving a hosted payload without compensation for the launch or transfer of ownership of the payload.

62. Rather than include a ready-to-execute draft contract complying with the terms of the RFP, Orbital ATK instead closed its submission with a term sheet meant to encourage additional discussion of how the program could be fixed.

63. At no time has Orbital ATK ever received from DARPA a substantive response to its objections. Instead, by letter dated December 14, 2016, DARPA informed Orbital ATK that it had made the final decision to no longer consider Orbital ATK's submissions in response to the RFP and gave no indication that any of the unlawful provisions were being remedied.

64. Upon information and belief, on February 6, 2017, DARPA announced that it has reached a final decision, and Space Systems/Loral LLC has been selected as the commercial entity that will receive the hundreds of millions of taxpayer dollars in subsidized technology and mission costs, and will own for its sole commercial use the robotic capability DARPA has

decided to demonstrate. Space Systems/Loral LLC is a wholly owned subsidiary of MacDonald Dettwiler and Associates (MDA), a Canadian corporation.

65. DARPA's steadfast refusal to address the legal and commercial deficiencies in its misguided and wasteful RSGS program has left Orbital ATK with no choice but to seek relief from this Court to prevent further serious harm to U.S. taxpayers, as well as to its own interests and investment.

CLAIMS

COUNT I:
Violation of the National Space Policy in Violation of the Administrative Procedure Act: Purchase Commercial Space Capabilities

66. Orbital ATK incorporates by reference all preceding paragraphs as if restated herein.

67. The APA forbids agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C § 706(2)(A).

68. DARPA is bound by law to act in accordance with, and avoid violations of, the National Space Policy of 2010, a Presidential Policy Directive having the force of law.

69. The National Space Policy mandates that "To promote a robust domestic commercial space industry, departments and agencies shall . . . Purchase and use commercial space capabilities and services to the maximum practical extent when such capabilities and services are available in the marketplace and meet United States Government requirements. . ."

70. DARPA has admitted no present United States Government requirements exist for the RSGS technology described in the RFP.

71. Nonetheless, Orbital ATK is developing commercial capabilities sufficient to meet DARPA's stated objectives. MEV 1, which Orbital ATK expects to launch in 2018, can meet six of DARPA's nine stated objectives more than two years before RSGS's planned completion under DARPA's proposal. The other three objectives (also being addressed by NASA's Restore-

L program) Orbital ATK expects will be met by its follow-on MEV 4/5 by 2021, also before DARPA's RSGS timeline.

72. Orbital ATK's MEV program is poised to provide the capabilities and services DARPA's RSGS program claims to require, sooner than DARPA's program would provide them, and at substantially less cost to the U.S. Government.

73. Thus, DARPA's decision to pursue the RSGS program as constituted in direct violation of the National Space policy is arbitrary, capricious, and not in accordance with law thereby violating § 706 of the APA.

COUNT II:
Violation of the National Space Policy in Violation of the Administrative Procedure Act: Modify Existing Capabilities

74. Orbital ATK incorporates by reference all preceding paragraphs as if restated herein.

75. The APA forbids agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C § 706(2)(A).

76. DARPA is bound by law to act in accordance with, and avoid violations of, the National Space Policy of 2010, a Presidential Policy Directive having the force of law.

77. The National Space Policy mandates that "To promote a robust domestic commercial space industry, departments and agencies shall . . . Modify commercial space capabilities and services to meet government requirements when existing commercial capabilities and services do not fully meet these requirements and the potential modification represents a more cost-effective and timely acquisition approach for the government. . ."

78. DARPA has admitted there are no present United States Government requirements for the RSGS technology described in the RFP.

79. And, as noted in Count I, Orbital ATK's MEV program can meet DARPA's stated needs.

80. Nonetheless, Orbital ATK is developing commercial capabilities sufficient to meet DARPA's stated objectives. MEV 1, which Orbital ATK expects to launch in 2018, can meet six of DARPA's nine stated objectives more than two years before RSGS's planned completion under DARPA's proposal. The other three objectives (also being addressed by NASA's Restore-L program) Orbital ATK expects will be met by its follow-on MEV 4/5 by 2021, also before DARPA's RSGS timeline.

81. Orbital ATK's MEV program, modified to address any specific stated need, is poised to provide the capabilities and services DARPA's RSGS program claims to require, sooner than DARPA's program would provide them, and at substantially less cost to DARPA.

82. Thus, DARPA's decision to pursue the RSGS program as constituted in direct violation of the National Space policy is arbitrary, capricious, and not in accordance with law thereby violating § 706 of the APA.

COUNT III:
Violation of the National Space Policy in Violation of the Administrative Procedure Act: Purchase Commercial Space Capabilities

83. Orbital ATK incorporates by reference all preceding paragraphs as if restated herein.

84. The APA forbids agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C § 706(2)(A).

85. DARPA is bound by law to act in accordance with, and avoid violations of, the National Space Policy of 2010, a Presidential Policy Directive having the force of law.

86. The National Space Policy mandates that "To promote a robust domestic commercial space industry, departments and agencies shall . . . Develop governmental space systems only when it is in the national interest and there is no suitable, cost-effective U.S. commercial or, as appropriate, foreign commercial service or system that is **or will be available. . .**"

87. DARPA has admitted there are no present United States Government requirements

for the RSGS technology described in the RFP, and thus the RSGS program is not in the national interest.

88. Nonetheless, Orbital ATK is developing commercial capabilities sufficient to meet DARPA's stated objectives. MEV 1, which Orbital ATK expects to launch in 2018, can meet six of DARPA's nine stated objectives more than two years before RSGS's planned completion under DARPA's proposal. The other three objectives (also being addressed by NASA's Restore-L program) Orbital ATK expects will be met by its follow-on MEV 4/5 by 2021, also before DARPA's RSGS timeline.

89. Thus, DARPA's decision to pursue the RSGS program as constituted in direct violation of the National Space policy is arbitrary, capricious, and not in accordance with law thereby violating § 706 of the APA.

COUNT IV:
Violation of the National Space Policy in Violation of the Administrative Procedure Act: Refrain From Precluding, Discouraging, or Competing with Commercial Activities

90. Orbital ATK incorporates by reference all preceding paragraphs as if restated herein.

91. The APA forbids agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C § 706(2)(A).

92. DARPA is bound by law to act in accordance with, and avoid violations of, the National Space Policy of 2010, a Presidential Policy Directive having the force of law.

93. The National Space Policy mandates that "To promote a robust domestic commercial space industry, departments and agencies shall . . . **Refrain from conducting United States Government space activities that preclude, discourage, or compete with U.S. commercial space activities, unless required by national security or public safety**. . ." (emphasis added).

94. DARPA has admitted there are no present United States Government requirements for the RSGS technology described in the RFP, and thus the RSGS program is not required by

national security or public safety.

95. Orbital ATK has committed up to $200 million in pursuing on-orbit robotic satellite servicing capabilities and is now building its first MEV which will be in service two years or more before DARPA's RSGS timeline.

96. DARPA has not described, nor is there evidence of, a current national security or public safety requirement that would allegedly justify the proposed activities here. But, even if such a national security justification was argued to exist, the complete transfer of ownership of the DARPA funded technology to a single private entity for its sole commercial use is inconsistent with any such alleged national security interest, and thus cannot remedy the violation of the National Space Policy.

97. Regardless, DARPA's program will unfairly and unnecessarily provide hundreds of millions of dollars of value to a market competitor, which will preclude, discourage, and compete with ongoing commercial space activities, of Orbital ATK and others.

98. Thus, DARPA's decision to pursue the RSGS program as constituted in direct violation of the National Space policy is arbitrary, capricious, and not in accordance with law thereby violating § 706 of the APA.

COUNT V:
Violation of the National Space Policy in Violation of the Administrative Procedure Act: Make Technology Available on an Equitable Basis

99. Orbital ATK incorporates by reference all preceding paragraphs as if restated herein.

100. The APA forbids agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C § 706(2)(A).

101. DARPA is bound by law to act in accordance with, and avoid violations of, the National Space Policy of 2010, a Presidential Policy Directive having the force of law.

102. The National Space Policy mandates that "To promote a robust domestic commercial

space industry, departments and agencies shall . . . Ensure that United States Government space technology and infrastructure are made available for commercial use on a reimbursable, noninterference, and equitable basis to the maximum practical extent. . ."

103. DARPA has admitted there are no present United States Government requirements for the RSGS technology described in the RFP, and thus the RSGS program is not required by national security or public safety.

104. Nonetheless, DARPA's RSGS program proposes to give its valuable robotic payload, already delivered to orbit by DARPA-funded launch services, to the participating company, transferring hundreds of millions of dollars in sophisticated government robotics equipment and related space launch services to a single competitor.

105. The robotics payload introduced into orbit through the RSGS program will not be available on an equitable basis.

106. Thus, DARPA's decision to pursue the RSGS program as constituted in direct violation of the National Space policy is arbitrary, capricious, and not in accordance with law thereby violating § 706 of the APA.

REQUESTS FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray this Court:

a) Enter a declaratory judgment that the DARPA RSGS project violates the National Space Policy and the Administrative Procedure Act;

b) Enter a permanent injunction prohibiting any further action in furtherance of the RSGS procurement; and

c) Award all other relief as the Court may deem just and proper, including any costs or fees to which Plaintiffs may be entitled by law.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of any and all issues in this action so triable by right.

Dated: February 7, 2017

ORBITAL ATK, INC. and
SPACE LOGISTICS, LLC

By Counsel

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