UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

United States of America, Plaintiff, vs. BOOZ ALLEN HAMILTON, Inc., et al., Defendants.	Case No.: 1:22-cv-01603-CCB **REDACTED VERSION**

DEFENDANTS EVERWATCH CORP., EC DEFENSE HOLDINGS, LLC, AND ANALYSIS, COMPUTING & ENGINEERING SOLUTIONS, INC.'S ANSWER AND DEFENSES

Defendants EverWatch Corp. ("EverWatch"), EC Defense Holdings, LLC, and Analysis, Computing & Engineering Solutions, Inc. (collectively, and together with EverWatch, "EW Defendants") respond as follows to the allegations set forth in Plaintiff United States of America's ("Plaintiff" or "DOJ") June 29, 2022 Complaint.

PRELIMINARY STATEMENT

1. The DOJ seeks to block the parties' transaction under the auspices of preserving competition that does not need protecting because that competition is not at risk. With or without a signed deal, the allegedly imminent competition for the OPTIMAL DECISION ("OD") bid that the DOJ claims to be so worried about, will occur in the same arms-length form no matter what. The DOJ has not alleged any evidence to the contrary. The reason for that is clear: the antitrust laws require the parties to remain and behave separately in the period between signing and closing and they are doing just that. DOJ nevertheless seeks the extraordinary and draconian remedy of abrogating a merger agreement and blocking a transaction in a situation where *the National Security Agency ("NSA") – the only customer at issue – has expressed zero concerns*

about the deal, presumably because the NSA has the ability to insulate itself from the mirage of harm that the DOJ now imagines. The NSA had the opportunity to speak up in the declaration the DOJ attached to its preliminary injunction motion, but said nothing. That silence tells the Court everything it needs to know.

2. EverWatch is a national security technology solutions company that builds and operates classified platforms in service of mission critical intelligence community and Department of Defense operations. Booz Allen Hamilton ("BAH") is a consulting firm with expertise in analytics, digital, engineering, and cyber, that provides solutions to businesses, government, and military organizations. In March 2022, EverWatch and BAH announced that they had signed an agreement ("Merger Agreement") pursuant to which BAH would acquire EverWatch ("Transaction") subject to the satisfaction of a number of closing conditions.

3. The NSA Directorate of Capabilities ("Capabilities Directorate") is a division of the NSA that handles strategy and integration of advanced technology. For decades, four Large System Integrators ("LSIs") – [redacted] – have dominated the provision of contracting services to the Capabilities Directorate. By merging EverWatch's complementary technical capabilities with BAH's broad base of expertise, the new BAH will have a broader array of enhanced offerings, enabling it to pose a meaningful competitive challenge to the four incumbent LSIs.

4. The Transaction enhances competition by combining the highly complementary offerings of EverWatch with BAH. EverWatch will expand BAH's capabilities in both intelligence and defense projects. The Transaction will add EverWatch's high performance computing and expertise, particularly in cloud and analytics capabilities, Signals Intelligence ("SIGINT"), and SIGINT/Cyber missions, to BAH's deep artificial intelligence and cyber

portfolio. As a result, the parties anticipate that the Transaction will enable the combined firm to expand service offerings, improve the overall quality of its services, and create further opportunities for more aggressive competition. All of this directly benefits the NSA, other government clients, national security, and all Americans.

5. DOJ's Complaint does not question the Transaction's many procompetitive features. Nonetheless, DOJ seeks to block it because of a single bid opportunity for a single contract: the NSA's yet-to-be released OD. EverWatch and BAH are both currently preparing to bid on that contract. DOJ's Complaint is based on an unrealistic and myopic view of the government contracting space and a blatant mischaracterization of the relevant facts. DOJ has put forth the novel theory that (1) the overall legality of the Transaction should rise or fall based on the one-time competitive process that could take place for the OD bid; (2) only EverWatch and BAH are relevant to assessing the competitive effects of the transaction on the outcome of that single bid process; (3) the analysis should ignore the competitive constraint created by the NSA's control over the process, and the threat posed by other bidders the NSA has itself identified; and (4) most bizarrely, that once the parties signed the Merger Agreement, it became impossible for BAH and EverWatch to bid competitively for OD, even while they remain separate companies, even while the customer – NSA – is a critical repeat customer to both parties, and even while DOJ has sued to block the transaction. In the real world, none of DOJ's speculative theory holds up. Both EverWatch and BAH are highly incentivized to compete aggressively for and win the bid.

6. DOJ's theory blatantly ignores the parties' ample incentives to compete. DOJ gets to that result by entirely disregarding the uncertainties associated with the DOJ's merger review process, the aggressive approach the current DOJ has taken to merger enforcement in recent months, and the fact that the DOJ issued a Second Request and then sued on this Transaction itself.

The DOJ disregards all of that, and posits that because the parties are signatories to the Merger Agreement, they must necessarily be acting with certainty, now, that the Transaction *will* close, and with certainty that the profits of the two firms will inevitably be combined – thus preventing them from acting as separate companies for purposes of the upcoming OD competition (notwithstanding that each company has committed in writing to competing). DOJ's theory is legally and factually meritless.

7. The facts in the real world disprove every tenet of DOJ's speculative theory. A single forthcoming request for proposal ("RFP") for OD does not constitute a relevant antitrust market. Further, attempting to assess the competitive set for OD is speculative because the final RFP has not yet been released. Even if a forthcoming RFP for OD bid does constitute a relevant market, the facts demonstrate that multiple competitors are capable of acting as the lead (or "prime") contractor for the OD contract.

8. Of the dozens of government requests for proposal that EverWatch competes for annually, DOJ has alleged that a single forthcoming request for proposal from the NSA for OD constitutes a relevant antitrust market. OD involves modeling and simulation services – services that multiple government agencies, including the Department of Defense, procure from third party contractors. Contrary to DOJ's allegations, the OD program is not unique or strategic. *Indeed, it is not even the only modeling and simulation contract at the NSA*. A single bidding event (OD) for a single customer (the United States) at a single point in time (the submission of bids) is simply not a relevant antitrust market, and does not accurately reflect competitive economic realities. The lack of any reference to market shares in DOJ's Complaint demonstrates the problem inherent in classifying a single bid as a relevant market.

9. The proposed market definition regarding OD is speculative because it is based on a hypothetical RFP that has not been finalized. Depending on the specific formulation of the final RFP, there could be completely different competitive parameters for the OD bid. The decision about which competitive set to seek for a bid is a decision left squarely within the discretion of the NSA. The NSA is well-aware that BAH and EW entered into the Merger Agreement; if the NSA were at all concerned about their ability and incentives to compete, it could change the RFP to bring in more competitors. For example, the NSA could elect at any time to turn the OD RFP into a "Small Business Opportunity." By doing so, neither EverWatch nor BAH could bid to be the prime contractor. There would be a different competitive set altogether.

10. Even assuming that the OD bid itself is a relevant market, DOJ's allegation that there are only two competitors in that market falls apart upon an examination of the facts known to DOJ. The NSA's declaration in this case makes that clear. The Director of Business Management & Acquisition and the Senior Acquisition Executive of the NSA states that there are at least *178 companies* that NSA believed could support the OD procurement and *14 companies* who expressed an interest in being selected as the prime contractor. The fact that only two companies – BAH and EverWatch – submitted non-binding letters of intent to bid as the prime contractor does not mean that there are only two competitors for OD. At the very least, every one of the 14 firms that indicated an interest in being the prime contractor has the capabilities to do so, and therefore constitutes a competitor for antitrust purposes.

11. Further, DOJ's claim that the Merger Agreement itself constitutes a violation of the antitrust laws seeks to establish a new—and unprecedented—rule: any time parties sign a merger agreement that would somehow affect "incentives" to compete with one another, their merger agreement is inherently anticompetitive under Sherman Act § 1. DOJ's theory would upend the

purpose of the entire body of antitrust law including the Sherman Act § 1, the Clayton Act § 2, and the Hart-Scott-Rodino Act. This body of law reflects the merger process Congress designed, and which DOJ aims to undo along with decades of standard pre-close merger review. If DOJ's theory is adopted, then going forward it can halt any merger under Sherman Act § 1 if the merger agreement merely lessens "incentives" to compete, even if the merger will not, in fact, substantially lessen competition under Clayton Act § 7. Moreover, DOJ's approach would permit it to halt mergers merely on the basis of "incentives" even if the parties would be prohibited from acting on those incentives prior to close by both Sherman Act §1 and the Hart-Scott-Rodino Act's prohibition on "gun-jumping."

12. DOJ's baseless assertion that the Merger Agreement "immediately reduced the incentive each company has to submit a competitive bid" is directly contradicted by the facts. After the announcement of the Transaction, the NSA sought letters of intent from prime bidders for the OD contract. *Both* EverWatch and BAH submitted separate letters of intent. If the parties "immediately" lost their incentives to compete, one of them would have backed off. Contrary to DOJ's allegations, EverWatch expected the NSA to open the OD bid process months ago, and continues to prepare to compete vigorously—at arms-length against BAH—for that bid, just as it has competed vigorously against BAH for at least one other bid issued by the NSA since the Merger Agreement was signed. Given that EverWatch cannot know whether the proposed merger will actually close, it has no incentive to do otherwise.

13. DOJ's allegation that the Transaction was at all motivated by the OD bid is fanciful and contrary to the facts. DOJ tries to paint a picture in its Complaint that after holding the OD contract for 20 years, BAH felt threatened by potential competition from EverWatch, so it decided to acquire it solely to eliminate its competitor. But there is no factual support for that story. In

fact, the NSA first alerted potential bidders about a forthcoming OD bid (then titled MASON 4) in August 2018, and the NSA has delayed the bid 8 times since then. If BAH were truly trying to get rid of a competitive threat, it would have offered to buy EverWatch years earlier. Further, the potential fees associated with the OD procurement pale in comparison to the Transaction's value. If EverWatch wins the forthcoming bid for OD, it anticipates earning approximately [redacted] per year in fees, less than [redacted] of the Transaction's purchase price. An argument that the OD procurement motivated the Transaction is clearly contradicted by the facts.

14. In total, DOJ presents an overly narrow view of the Transaction that mischaracterizes the facts and stretches the law beyond recognition. This procompetitive deal is not—and has never been—about raising prices or reducing quality of services provided to the government. Nor could it be, given the competition EverWatch and BAH face today from dozens of competitors, particularly the four LSIs who have dominated the provision of contracting services to the Capabilities Directorate for decades. This deal is about creating more competition to those dominant incumbent players, and increasing the quality of service, pace of innovation, and breadth of choice to the benefit of the United States in its national security procurements. Economic realities, including the unique tools in the hands of Plaintiff with respect to government contracting, will not allow the increased prices or decreased quality that DOJ hypothesizes in its Complaint. Specific responses to DOJ's allegations are below.

SPECIFIC RESPONSES TO PLAINTIFF'S ALLEGATIONS

EW Defendants deny all factual allegations set forth in the Complaint unless expressly admitted. Any admission herein is limited to the express language of the response and shall not be deemed an implied admission of additional facts. EW Defendants need not admit or deny legal conclusions or arguments. Although EW Defendants need not admit or deny legal conclusions or arguments, EW Defendants affirmatively deny that they have violated any applicable federal law,

including any federal antitrust law, and assert that the Court should deny the relief the Plaintiff requests.

EW Defendants do not respond to the headings set forth in the Complaint. To the extent any headings purport to contain any factual allegations, they are denied.

EW Defendants further answer the numbered paragraphs of the Complaint as follows:

Paragraph 1:

The United States of America brings this antitrust lawsuit to prevent Booz Allen Hamilton Holding Corporation ("Booz Allen") from acquiring EverWatch Corp. ("EverWatch"). For the last three years, Booz Allen and EverWatch have been locked in a winner-takes-all competition to provide operational modeling and simulation services to the National Security Agency ("NSA"), which is a part of the Department of Defense, and is headquartered at Ft. George G. Meade in Anne Arundel County Maryland. The two companies are the only competitors for this project, and if the merger is not quickly blocked, NSA and American taxpayers likely will be harmed in the form of higher prices, lower quality, and less innovation for this crucial service

Response to Paragraph 1:

Paragraph 1 characterizes this action and asserts legal conclusions and argument to which no response is required. To the extent that a response is required, EW Defendants admit that Plaintiff purports to bring a civil action to prevent BAH from acquiring EverWatch. EW Defendants deny, however, that Plaintiff has any cause of action against EW Defendants, that the Transaction violates the antitrust laws, and that Plaintiff is entitled to any relief. EW Defendants deny that the Transaction will result in harm to NSA or the American taxpayer in any form, including through higher prices, lower quality, or less innovation. EW Defendants admit that the NSA is a part of the Department of Defense and is headquartered at Ft. George G. Meade in Anne Arundel County, Maryland. EW Defendants deny that EverWatch and BAH are the only competitors for modeling and simulation services projects at NSA. Indeed, numerous companies supply modeling and simulation services to the NSA. EW Defendants deny in all other respects the allegations in Paragraph 1.

Paragraph 2:

NSA is the United States' leader in cryptology, signals intelligence, and cybersecurity, and is responsible for providing foreign signals intelligence to our nation's policymakers and armed forces. Signals intelligence, which is derived from electronic signals and emissions in communications systems, plays a vital role in our national security by providing America's leaders with critical information needed to defend our country, save lives, and advance U.S. goals and alliances globally. NSA periodically issues a contract for modeling and simulation services to support its signals intelligence mission. The next such contract NSA plans to issue is known by the unclassified name OPTIMAL DECISION.

Response to Paragraph 2:

EW Defendants admit that NSA issues contracts for modeling and simulation services. EW Defendants deny that modeling and simulation of signal intelligence networks is the same as signals intelligence itself. EW Defendants further admit that OPTIMAL DECISION is anticipated to be a contract for modeling and simulation services. EW Defendants lack sufficient information to form a belief about the truth of the remaining allegations in Paragraph 2, and deny those allegations on that basis.

Paragraph 3:

Booz Allen and EverWatch have spent years analyzing NSA's needs, designing solutions, and recruiting highly skilled personnel for OPTIMAL DECISION. According to the companies' own documents and NSA outreach preparing for the contract bidding, they were (and currently still are) the only competitors for the contract. But on March 15, 2022, just a few months before NSA was scheduled to release the request for proposals ("RFP") that would formally begin the selection process, Booz Allen decided to stop competing with EverWatch and instead chose to buy the company. That merger agreement immediately reduced the incentive each company has to submit a competitive bid, and, if completed, would eliminate the competition between the two altogether, leaving NSA to face a monopolist.

Response to Paragraph 3:

EW Defendants admit that EverWatch has worked to analyze NSA's needs, designed solutions, and recruited highly skilled personnel for multiple NSA opportunities The NSA has not yet released the RFP for OD, so EW Defendants lack sufficient information to form a belief as to the competitive landscape for that potential bid and therefore deny that EverWatch and BAH are

the only competitors. EW Defendants lack sufficient information to form a belief about the truth of the allegations in Paragraph 3 as to BAH and NSA, and deny those allegations on that basis. EW Defendants deny that the Merger Agreement has reduced EverWatch's incentive to compete for OD, or any other opportunity. EverWatch continues to prepare to compete vigorously—at arms-length against BAH—for the OD bid, just as it has competed vigorously against BAH for at least one other bid issued by the NSA since the Merger Agreement was signed. Given that EverWatch cannot know whether the proposed merger will actually close, it has no incentive to do otherwise. EW Defendants further respond that the selective reference to unidentified written material in Paragraph 3 is taken out of context and misleading; and that the documents speak for themselves. To the extent that Paragraph 3 asserts legal conclusions and argument, no response is required. EW Defendants deny any remaining allegations in Paragraph 3.

Paragraph 4:

Before they agreed to merge, Booz Allen and EverWatch were competing vigorously to win this contract. Competitors for service contracts like OPTIMAL DECISION invest significant time and resources to assemble their teams, develop their concepts, and present their proposals. Companies distinguish their proposals by offering more-talented personnel, lower costs, a reduced markup for the prime contractor, and additional services. Competitors have an incentive to bid aggressively for NSA's business because losing would mean the loss of all of the revenue and profit stream of the project and earning nothing on the investment made by the company. But the merger agreement stripped the companies of the incentive to bid aggressively against each other to win the contract and replaced it with an incentive to reduce their investments and increase their prices to NSA. Aggressive bidding would serve only to reduce the profits of the post-merger Booz Allen, while higher prices or lower investment would increase those profits.

Response to Paragraph 4:

EW Defendants admit that at all times, including after EverWatch agreed to merge with BAH and to the present, EverWatch has prepared to compete vigorously to bid to win the OD contract. EW Defendants deny that the Merger Agreement has reduced EverWatch's incentive to compete for OD, or any other opportunity. EW Defendants further deny that the Merger

Agreement has incentivized EverWatch to reduce its investments in preparing to bid on OD and increase its prices to NSA. EW Defendants lack sufficient information to form a belief about the truth of the allegations regarding "competitors," "companies," "proposals," and "service contracts" in Paragraph 4, and deny those allegations on that basis. EW Defendants lack sufficient information to form a belief about the truth of the allegations in Paragraph 4 as to BAH, and deny those allegations on that basis. To the extent a response is required, EW Defendants deny the remaining allegations in Paragraph 4.

Paragraph 5:

The merger agreement created a "heads Booz Allen wins, tails American taxpayers lose" situation. Booz Allen and EverWatch now are motivated not to prepare the most competitive proposals for the project, but rather to push forward aggressively with their merger plans, safe in the knowledge that no matter which company NSA selects, ultimately it will be the merged firm that owns the contract and reaps the rewards.

Response to Paragraph 5:

Paragraph 5 asserts legal conclusions and argument to which no response is required. To the extent a response is required, EW Defendants deny that the Merger Agreement has reduced EverWatch's incentive to compete for OD, or any other opportunity. EW Defendants further deny that the Merger Agreement has incentivized EverWatch to reduce its investments in preparing to bid on OD and increase its prices to NSA. EW Defendants deny the remaining allegations in Paragraph 5.

Paragraph 6:

The merger must be blocked in order to restore the competition that NSA—and the Americans that it defends—rely on for innovative and high-quality signals intelligence modeling and simulation support services at fair prices. Therefore, the United States of America brings this civil action to enjoin the agreement between Booz Allen and EC Defense Holdings, LLC, which has already reduced Defendants' incentives to compete in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. If consummated, the proposed transaction would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. In support of this action, the United States alleges as follows.

Response to Paragraph 6:

Paragraph 6 characterizes this action and asserts legal conclusions and argument to which no response is required. To the extent a response is required, EW Defendants deny that Plaintiff has any cause of action against EW Defendants, that the Merger Agreement violates § 1 of the Sherman Act, that the Transaction violates the Clayton Act, and that Plaintiff is entitled to any relief. EW Defendants deny the remaining allegations in Paragraph 6.

Paragraph 7:

The United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. § 25, and Section 4 of the Sherman Act, 15 U.S.C. § 4, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 1 of the Sherman Act, 15 U.S.C. § 1.

Response to Paragraph 7:

EW Defendants admit that Plaintiff has filed its Complaint pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and Section 5 of the Sherman Act, 15 U.S.C. § 4, and that Plaintiff purports to seek to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. §18 and Section 1 of the Sherman Act, 15 U.S.C. § 1. EW Defendants deny that the Merger Agreement violates the Sherman Act or that the proposed Transaction would lessen competition in any market or otherwise violate the Clayton Act or Sherman Act, and deny that Plaintiff is entitled to any relief.

Paragraph 8:

As such, this matter presents a federal question, and this Court has subject matter jurisdiction over this action under Section 15 of the Clayton Act, 15 U.S.C. § 25, Section 4 of the Sherman Act, 15 U.S.C. § 4, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

Response to Paragraph 8:

EW Defendants admit that the Court has subject matter jurisdiction over this matter.

Paragraph 9:

Defendants are engaged in, and their activities substantially affect, interstate commerce. Defendants sell services to NSA, which is headquartered at Ft. Meade, and located in Anne Arundel County Maryland. NSA is a component organization of the U.S. Department of Defense and a member of the United States intelligence community.

Response to Paragraph 9:

Paragraph 9 asserts legal conclusions and argument to which no response is required. EW Defendants admit that they are engaged in interstate commerce and currently sell services to NSA. EW Defendants further admit that NSA is a component organization of the U.S. Department of Defense and a member of the United States intelligence community. EW Defendants lack sufficient information to admit or deny the allegations in Paragraph 9 as to BAH, and deny the allegations on that basis. To the extent a response is required, EW Defendants deny the remaining allegations in Paragraph 9.

Paragraph 10:

This Court has personal jurisdiction over each Defendant under Section 12 of the Clayton Act, 15 U.S.C. § 22, and F.R.C.P 4(h), (k). Booz Allen Hamilton Inc., EC Defense Holdings, LLC, EverWatch and ACES, Inc. have offices in Maryland, and Defendants regularly transact business with NSA in Maryland.

Response to Paragraph 10:

EW Defendants admit that they transact business with NSA in Maryland, that EverWatch and ACES, Inc. have offices in Maryland, and that the Court has personal jurisdiction over EW

Defendants. EW Defendants lack sufficient information to admit or deny the allegations in Paragraph 10 as to BAH, and deny the allegations on that basis.

Paragraph 11:

Defendants Booz Allen Hamilton, EverWatch and ACES all have offices in Annapolis Junction in Anne Arundel County Maryland, and the essential events described in the Complaint took place at NSA and/or at Defendants' offices in Anne Arundel County, Maryland.

Response to Paragraph 11:

EW Defendants admit that EverWatch and ACES have offices in Annapolis Junction, Maryland. The remainder of Paragraph 11 asserts legal conclusions and argument to which no response is required. EW Defendants lack sufficient information to admit or deny the allegations in Paragraph 11 as to BAH, and deny the allegations on that basis.

Paragraph 12:

Venue is proper under Section 12 of the Clayton Act, 15 U.S.C. § 22, and under 28 U.S.C. §§ 1391(b) and (c).

Response to Paragraph 12:

EW Defendants admit that venue is proper in this Court.

Paragraph 13:

For over two decades, Booz Allen has been the sole provider of operational modeling and simulation services to support NSA's signals intelligence mission. Booz Allen so thoroughly dominated this market that its only competitor for the last contract, which was awarded in 2014, exited the market. This departure left Booz Allen with what appeared to be a lock on NSA's successor project, which is now known as OPTIMAL DECISION.

Response to Paragraph 13:

EW Defendants admit that BAH has provided modeling and simulation services to NSA pursuant to the MASON I, MASON II, and MASON III contracts. EW Defendants lack sufficient information to admit or deny the remaining allegations in Paragraph 13, and deny the allegations on that basis.

Paragraph 14:

But in 2019, EverWatch, an agile and innovative competitor, identified weaknesses in Booz Allen's work and decided to challenge the incumbent. Over the years that followed, EverWatch pulled together two dozen highly-skilled intelligence technology companies to form a team to dethrone Booz Allen. As of early 2022, according to Booz Allen deal documents, EverWatch's management "project[ed] having a [redacted]"[2] chance of winning the next bid and displacing Booz Allen from its decades-long incumbency. Even Booz Allen acknowledged that EverWatch posed a significant threat. Booz Allen's internal documents gave EverWatch a [redacted] percent chance of winning the bid. On March 15, 2022, only weeks before NSA planned to release an RFP for the next project, Booz Allen terminated this rivalry with an agreement to purchase EverWatch.

[2] As described in Plaintiff's Motion For Permission To File Sensitive Information In Plaintiff's Complaint Under Seal, the Complaint contains, or refers to, business plans, sales and revenue information, and other competitively sensitive information produced by Booz Allen and EverWatch to the Department of Justice as a result of their pre-merger notification filing. Booz Allen and EverWatch provided the information to DOJ in confidence and such information has been protected from public disclosure during the Department's investigation. Public disclosure of this competitively sensitive information could impact the integrity of the bidding for the OPTIMAL DECISION contract at issue in the Complaint, undermine the National Security Agency's ability to negotiate future contracts with prospective bidders, and facilitate anticompetitive coordination between the parties

Response to Paragraph 14:

EW Defendants admit that EverWatch identified the OPTIMAL DECISION bid as a potential opportunity in 2019 and has since identified subcontractors to assist it in bidding on the opportunity if and when the RFP is released. EW Defendants further respond that the selective quotation of EverWatch's written material in Paragraph 14 is taken out of context and misleading; and that the full document speaks for itself. EW Defendants lack sufficient information to admit or deny the allegations in Paragraph 14 as to BAH, and deny the allegations on that basis. EW Defendants deny the remaining allegations in Paragraph 14.

With respect to Plaintiff's Footnote 2, EW Defendants admit that the Complaint contains, or refers to, business plans, sales and revenue information, and other competitively sensitive information produced by EverWatch to DOJ. EverWatch further admits that it provided the information to DOJ in confidence and such information has been protected from public disclosure

during the DOJ's investigation. EverWatch also admits that public disclosure of this competitively sensitive information could impact the integrity of the bidding for the OPTIMAL DECISION contract and undermine the NSA's ability to negotiate future contracts with prospective bidders. The remaining allegations in Footnote 2 contain legal argument to which no response is required.

Paragraph 15:

This merger-to-monopoly, preceding an imminent RFP for an NSA project that is vital to our nation's security, is a unique situation that merits this immediate action by the United States of America. Before the merger agreement, each company had been recruiting top talent and sharpening its pencils to offer NSA the best value for this important project. When the companies agreed to merge, it no longer made sense to bid aggressively against each other. No matter which company NSA awards the contract to, the post-merger Booz Allen ultimately would provide the services and earn the profits. As a result, neither company has an incentive to offer its best terms, most-talented personnel, or highest-quality service. The robust competition between Booz Allen and EverWatch effectively ended on the date of the merger agreement. That agreement therefore violates Section 1 of the Sherman Act, 15 U.S.C. § 1, which prohibits agreements that unreasonably restrain trade.

Response to Paragraph 15:

Paragraph 15 asserts legal conclusions and arguments that do not require a response. To the extent a response is required, EW Defendants deny that the Merger Agreement has reduced EverWatch's incentive to compete for OD, or any other opportunity. EW Defendants further deny that the Merger Agreement has incentivized EverWatch to reduce its investments in preparing to bid on OD and increase its prices to NSA. EW Defendants deny the remaining allegations in Paragraph 15. EverWatch continues to prepare to compete vigorously—at arms-length against BAH—for the OD contract, just as it has competed vigorously against BAH for at least one other contract for which the NSA issued a RFP since the Merger Agreement was signed. Since signing the Merger Agreement, EverWatch has continued to recruit employees and prepare to offer the best possible value to NSA. Given that EverWatch cannot know whether the proposed merger will actually close, it has no incentive to do otherwise.

Paragraph 16:

The merger would also violate Section 7 of the Clayton Act, 15 U.S.C. § 18, which prohibits mergers that are likely to substantially lessen competition and "tend to create a monopoly." While the merger agreement alone has reduced the companies' incentives to compete in anticipation of the merger, the transaction itself would allow the merged firm to more directly and permanently end the rivalry. Booz Allen's acquisition of EverWatch would result in the combined entity possessing monopoly power in the sale of services for the NSA project. Once the merger is completed, Booz Allen need submit only one bid the for the NSA project. If the bids have already been submitted, it can withdraw the less profitable of the two bids. Either way, following the transaction, NSA would have no choice but to award the contract—yet again—to Booz Allen.

Response to Paragraph 16:

Paragraph 16 asserts legal conclusions and arguments that do not require a response. To the extent a response is required, EW Defendants deny the allegations in Paragraph 16.

Paragraph 17:

The Defendants know that their merger, as proposed, cannot survive antitrust scrutiny. To evade that scrutiny and prevent the Court from restoring competition to its state before March 2022, EverWatch engaged in a last-minute scramble to withdraw from its team leadership role by assigning it to a subcontractor one-tenth its own size. But that small company cannot recreate overnight EverWatch's multi-year effort to prepare for this project. Instead, for the team to be competitive against Booz Allen, EverWatch would need to continue its team leadership role in all but name and fully support the putative team leader as it prepares to submit its proposal. Even if it makes this transition, EverWatch has no incentive to offer a competitive price for its own services as a subcontractor. The prime contractor/subcontractor shell game that EverWatch is playing will thus do nothing to restore the competition that has already been lost as a result of this transaction.

Response to Paragraph 17:

Paragraph 17 asserts legal conclusions and arguments that do not require a response. To the extent a response is required, EW Defendants deny the allegations in Paragraph 17 and state that the selective, out-of-context allegations in the second sentence of Paragraph 17 in particular are inaccurate and misleading. EW Defendants further state that it is customary for parties seeking clearance of a transaction to propose "remedies" to the DOJ that will ameliorate potential lessening of competition as a result of the proposed transaction. Typically, DOJ engages with proposed remedies, advises the parties on adjustments that would make remedies acceptable to DOJ, and

memorializes agreed-upon remedies in the form of enforceable consent decrees. One of those proposals in this Transaction involved offering to move EverWatch out of the prime role for the OD bid to allow a third party that was already a member of the bid team, but was not a party to the transaction with BAH, to make all key competitive decisions about the bid. EverWatch's outreach to this subcontractor was purely in response to seeking to resolve its dispute with DOJ in alignment with the strong public policy favoring settlement.

Paragraph 18:

The proposed merger agreement violates Section 1 of the Sherman Act, 15 U.S.C. § 1, and the merger agreement itself violates Section 7 of the Clayton Act, 15 U.S.C. § 18. Both should be enjoined

Response to Paragraph 18:

Paragraph 18 asserts legal conclusions and argument to which no response is required. To the extent a response is required, EW Defendants deny the allegations in Paragraph 18.

Paragraph 19:

Defendant Booz Allen Hamilton Holding Corp. is a publicly traded professional services holding company and parent company of Defendant Booz Allen Hamilton, Inc. The Booz Allen Defendants are incorporated in the State of Delaware. Booz Allen Hamilton, Inc. is headquartered in McLean, Virginia, and has several offices in Maryland, including in Annapolis Junction which is in Anne Arundel County, Maryland. Defendant Booz Allen has almost 30,000 employees who provide a broad range of services and solutions in management, technology, consulting, and engineering. Defense and intelligence community customers account for two- thirds of its 2021 revenues of approximately $7.9 billion.

Response to Paragraph 19:

EW Defendants lack sufficient information to form a belief about the truth of the allegations in Paragraph 19 as to BAH and on that basis, deny the allegations in Paragraph 19.

Paragraph 20:

Defendant EverWatch is a Delaware Corporation, headquartered in Reston, Virginia with offices in Annapolis Junction, in Anne Arundel County Maryland. EverWatch provides a range of services to the defense and intelligence community focused on data science, intelligence, and cybersecurity. The company has [redacted] employees and forecasts revenues of [redacted] in 2022.

Response to Paragraph 20:

EW Defendants admit the allegations in the first two sentences of Paragraph 20. EW Defendants admit that EverWatch forecasted revenues of [redacted] in 2022. EW Defendants deny that EverWatch has [redacted] employees.

Paragraph 21:

Defendant Analysis, Computing & Engineering Solutions, Inc. ("ACES, Inc.") is a Corporation in Maryland and a subsidiary of EverWatch, with a principal office in Annapolis Junction, in Anne Arundel County Maryland.

Response to Paragraph 21:

EW Defendants admit the allegations in Paragraph 21.

Paragraph 22:

Defendant EC Defense Holdings, LLC, is a Delaware Limited-Liability Company, and owner of Defendant EverWatch. EC Defense Holdings has offices in Chevy Chase, in Montgomery County, Maryland, and it is owned by the private equity firm Enlightenment Capital.

Response to Paragraph 22:

EW Defendants admit that EC Defense Holdings, LLC is a Delaware Limited-Liability Company and owner of EverWatch, and admit that EC Defense Holdings, LLC has an office in Chevy Chase, in Montgomery County, Maryland. Enlightenment Capital, is a private equity fund that is one of a consortium of investors that owns EC Defense Holdings, LLC. EW Defendants deny the remaining allegations in Paragraph 22.

Paragraph 23:

Defendants Booz Allen and ACES, Inc. were the only companies to submit intent to prime letters to NSA regarding the OPTIMAL DECISION contract.

Response to Paragraph 23:

EW Defendants admit that ACES, Inc. submitted a non-binding letter of intent to prime to NSA regarding the OPTIMAL DECISION contract. EW Defendants lack sufficient information to form a belief about the truth of the remaining allegations in Paragraph 23 and on that basis, deny them.

Paragraph 24:

On March 15, 2022, pursuant to a merger agreement, Booz Allen agreed to acquire EverWatch for [redacted], effectively bringing the competition for the NSA contract to a halt. The merger agreement was signed and executed by representatives of Defendants Booz Allen Hamilton, Inc., EC Defense Holdings, LLC, and EverWatch Corp.

Response to Paragraph 24:

EW Defendants admit that BAH agreed to acquire EverWatch for [redacted] on March 15, 2022. EW Defendants also admit that the Merger Agreement was signed and executed by representatives of Booz Allen Hamilton, Inc., EC Defense Holdings, LLC, and EverWatch. The remaining allegations in Paragraph 24 contain legal conclusions and argument to which no response required. To the extent a response is required, EW Defendants deny the remaining allegations in Paragraph 24.

Paragraph 25:

Signals intelligence involves collecting foreign intelligence from communications and information systems and providing it to customers across the U.S. government, including senior civilian and military officials. To meet the challenges of today's fast-changing communications and information environment, NSA relies on companies that are sophisticated in a wide range of highly technical fields to develop and employ state-of-the-art tools to address these critical requirements.

Response to Paragraph 25:

EW Defendants lack sufficient information to form a belief about the truth of the allegations in Paragraph 25 and on that basis, deny them.

Paragraph 26:

One service these technologically advanced companies provide to NSA is operational modeling and simulation to support NSA's signals intelligence mission. The company selected to provide this service applies its knowledge of signals intelligence, computing, and communication networks to solve problems related to the efficient movement of signals intelligence between collection points, processing platforms, and end users.

Response to Paragraph 26:

EW Defendants admit that companies provide operational modeling and simulation services to NSA. EW Defendants lack sufficient information to form a belief about the truth of the allegations in Paragraph 26 and on that basis, deny them.

Paragraph 27:

NSA's signals intelligence modeling and simulation projects require a wide variety of skills, so it is common for companies pursuing contracts for those projects to assemble a group of subcontractors with specialized capabilities. The company that assembles the team, manages the project, and ultimately controls the bid process is referred to as the "prime contractor." Each of the corporate teammates have subcontract agreements with the prime contractor that set the prices for services provided by skilled engineers and technologists, as well as the cost of materials and other services. The prime contractor generally provides skilled labor from its own workforce as well, and applies a markup to the customer.

Response to Paragraph 27:

EW Defendants lack sufficient information to form a belief about the truth of the allegations in Paragraph 27 and on that basis, deny them.

Paragraph 28:

Companies compete for service contracts by recruiting and offering more-talented personnel who, by virtue of education, experience, or both, are able to provide the customer with higher-quality, more efficient, and more innovative solutions. Companies also compete for service contracts by offering lower markups and overhead rates, both of which result in a lower cost to the customer.

Response to Paragraph 28:

Paragraph 28 asserts legal conclusions and argument that do not require a response. To the extent a response is required, EW Defendants lack sufficient information to form a belief about the truth of the allegations in Paragraph 28 and on that basis, deny them.

Paragraph 29:

Booz Allen's agreement to buy EverWatch effectively terminated the competition between the companies for OPTIMAL DECISION, which is expected to be a [redacted], five- year project. NSA expects to release OPTIMAL DECISION for bid imminently. Booz Allen and EverWatch are, by their own estimation and NSA outreach, the only competitors for this project.

Response to Paragraph 29:

Paragraph 29 asserts legal conclusions and argument that do not require a response. EW Defendants lack sufficient information to form a belief as to the truth of the allegation that NSA expects to release OPTIMAL DECISION for bid imminently, and deny the allegation on that basis. EW Defendants deny the remaining allegations in Paragraph 29 except they admit that EverWatch intends to bid on the OD project if and when NSA issues a request for proposals.

Paragraph 30:

The definition of a relevant antitrust market is an analytical tool for understanding the potential anticompetitive effects of an acquisition or agreement. A relevant antitrust market has both a product and a geographic component.

Response to Paragraph 30:

Paragraph 30 asserts legal conclusions and argument that do not require a response. To the extent a response is required, EW Defendants deny the remaining allegations in Paragraph 30.

Paragraph 31:

The sale of signals intelligence modeling and simulation services to NSA through the OPTIMAL DECISION contract constitutes a relevant product market and line of commerce under Section 1 of the Sherman Act and Section 7 of the Clayton Act. NSA is a sophisticated customer that knows what signals intelligence modeling and simulation services it requires and has specified those services in the upcoming RFP for the OPTIMAL DECISION contract. No other reasonably interchangeable substitutes exist for the services that will be required under the OPTIMAL DECISION contract.

Response to Paragraph 31:

EW Defendants admit that the NSA is a sophisticated customer. The remaining allegations contained in Paragraph 31 assert legal conclusions and argument that do not require a response. To the extent a response is required, EW Defendants deny the remaining allegations in Paragraph 31.

Paragraph 32:

For example, while there are commercial applications for modeling and simulation services, NSA cannot purchase these alternative services to support its signals intelligence mission, which is highly specialized. Companies providing modeling and simulation services for NSA must understand signals intelligence, including its collection, processing, and analysis. They must understand the technology, including software and hardware, that is used to gather signals intelligence information; the nature of the data itself, including data formats and volume; and the many ways in which the data may be processed to provide useful information end users. The companies also must understand the needs of signals intelligence analysts and other end users in order to anticipate their future requirements. In addition, unlike personnel providing other types of modeling and simulation services, the individuals who provide these services to NSA must have high-level security clearances, as they need access to classified information and often work in NSA facilities. As a result, NSA cannot simply replace signals intelligence modeling and simulation services with modeling and simulation services used in other environments.

Response to Paragraph 32:

Paragraph 32 asserts legal conclusions and argument that do not require a response. To the extent a response is required, EW Defendants lack sufficient information to form a belief as to the truth of the allegations, and on that basis, deny the allegations in Paragraph 32.

Paragraph 33:

NSA is the intelligence community agency with responsibility for collecting, managing, analyzing, and distributing signals intelligence, and therefore it is the nation's primary consumer of signals intelligence modeling and simulation services. Other agencies that need this service usually obtain it through the NSA contract. NSA signs a new contract for signals intelligence modeling and simulation services once every five to seven years, and currently obtains those services through a contract with Booz Allen. That contract will be replaced in the immediate future by the OPTIMAL DECISION contract, which Booz Allen and EverWatch have been preparing to bid on for years. No other significant contract for signals intelligence modeling and simulation services is expected in the next five to seven years.

Response to Paragraph 33:

EW Defendants admit that BAH currently provides modeling and simulation services to NSA pursuant to the MASON III contract. Paragraph 33 asserts legal conclusions and argument that do not require a response. To the extent a response is required, EW Defendants lack sufficient information to form a belief as to the truth of the allegations, and on that basis, deny the remaining allegations in Paragraph 33.

Paragraph 34:

A useful approach to testing a candidate relevant antitrust market is known as the "hypothetical monopolist" test. This test asks whether a firm that is the only provider of a service (a hypothetical monopolist) could profitably impose a price increase—specifically, a small but significant and non-transitory increase in price ("SSNIP")—on a service sold by the merging firms in the relevant market. Signals intelligence modeling and simulation services sold to NSA through the OPTIMAL DECISION contract satisfies this hypothetical monopolist test.

Response to Paragraph 34:

Paragraph 34 asserts legal conclusions and argument that do not require a response. To the extent a response is required, EW Defendants deny the allegations in Paragraph 34.

Paragraph 35:

There is no substitute for signals intelligence modeling and simulation services for the OPTIMAL DECISION project. NSA could not turn to some other service in response to a SSNIP on these services, could not replace OPTIMAL DECISION with another contract vehicle in a timely manner, and would not so significantly reduce its purchases such that the SSNIP would be unprofitable for the hypothetical monopolist.

Response to Paragraph 35:

Paragraph 35 asserts legal conclusions and argument that do not require a response. To the extent a response is required, EW Defendants deny the allegations in Paragraph 35.

Paragraph 36:

The United States is the relevant geographic market for the OPTIMAL DECISION contract under Section 1 of the Sherman Act and Section 7 of the Clayton Act. The relevant product is sold to NSA, the OPTIMAL DECISION customer, which is located in the United States.

Response to Paragraph 36:

EW Defendants admit that NSA is located in the United States. Paragraph 36 asserts legal conclusions and argument that do not require a response. To the extent a response is required, EW Defendants deny the remaining allegations in Paragraph 36.

Paragraph 37:

Accordingly, the sale of signals intelligence modeling and simulation services under the OPTIMAL DECISION contract to NSA, a customer in the United States, constitutes a relevant market and line of commerce under Section 1 of the Sherman Act and Section 7 of the Clayton Act.

Response to Paragraph 37:

Paragraph 37 asserts legal conclusions and argument that do not require a response. To the extent a response is required, EW Defendants deny the allegations in Paragraph 37.

Paragraph 38:

The OPTIMAL DECISION contract is the latest in a series of NSA contracts for signals intelligence modeling and simulation services. The previous contracts, named MASON I, MASON II, and MASON III, were awarded in 2002, 2007, and 2014, respectively. Booz Allen has been the prime contractor for all of these contracts.

Response to Paragraph 38:

EW Defendants admit that OD is a proposed NSA contract and that the MASON I, MASON II, MASON III contracts were awarded to BAH in 2002, 2007, and 2014, respectively. EW Defendants lack sufficient information to form a belief as to the truth of the allegations in the second sentence of Paragraph 38 and deny them on that basis.

Paragraph 39:

For each of the three MASON contracts, Booz Allen faced competition from only one competitor. After losing the most recent contract—MASON III, which was awarded in 2014—Booz Allen's competitor lost its signals intelligence modeling and simulation capabilities as key personnel retired and others transferred to more profitable ventures. That company no longer has the expertise to pursue contracts like OPTIMAL DECISION and will not submit a proposal for OPTIMAL DECISION.

Response to Paragraph 39:

EW Defendants lack sufficient information to form a belief as to the truth of the allegations in Paragraph 39, and on that basis, deny them. Paragraph 39 further asserts legal conclusions and argument that do not require a response. To the extent a response is required, EW Defendants deny the allegations in Paragraph 39.

Paragraph 40:

Following the exit of its sole competitor, Booz Allen appeared to have a lock on NSA's signals intelligence modeling and simulation business. But in 2019, EverWatch, an agile and innovative defense and intelligence technology services company, hired several key individuals from Booz Allen who were aware of weaknesses in Booz Allen's work on MASON III. Sensing an opportunity to unseat the incumbent, EverWatch began assembling a group of two dozen highly skilled intelligence services and systems engineering companies to compete against Booz Allen for the OPTIMAL DECISION contract. By 2021, EverWatch assessed that it had a [redacted] chance of unseating Booz Allen and winning the contract.

Response to Paragraph 40:

Paragraph 40 asserts legal conclusions and argument that do not require a response. EW Defendants further respond that the selective reference of unidentified documents and/or testimony in Paragraph 40 is taken out of context and misleading; and that the full content of that written material speaks for itself. EW Defendants admit that EverWatch identified the OPTIMAL DECISION bid as a potential opportunity in 2019 and has since identified subcontractors to assist it in bidding on the opportunity if and when the RFP is released. EW Defendants deny all remaining allegations in Paragraph 40.

Paragraph 41:

EverWatch gave itself [redacted] of defeating Booz Allen because it has positioned itself as the "premier analytics capability developer for the Intelligence Community" and focused its business strategy on unseating incumbent prime contractors for signals-intelligence-related products and services. At a meeting with Booz Allen executives on December 14, 2021, EverWatch leaders advised Booz Allen that it had succeeded in overthrowing CACI Technologies as prime contractor on a major U.S. Navy contract because EverWatch offered "unique tech." They also told Booz Allen that the company was aggressively targeting "[o]ther primes," including "[redacted]" in 2022.

Response to Paragraph 41:

EW Defendants admit that EverWatch competes with multiple incumbent prime contractors including [redacted], among others. EW Defendants further respond that the selective quotation of unidentified documents and/or testimony in Paragraph 41 is taken out of context and misleading; and that the full content of that written material speaks for itself. EW Defendants deny all remaining allegations in Paragraph 41.

Paragraph 42:

EverWatch's skill and efficiency poses a threat to Booz Allen. EverWatch prides itself on "no bloat" staffing, in part because it follows a "high/low" staffing model for projects involving classified information, in which employees without security clearances

do some of the work, and then turn the project over to cleared personnel for completion. During its due diligence for the purchase of EverWatch, Booz Allen executives recognized that the company was more efficient than Booz Allen, so much so that they warned others not to "Booz Allen-ize" EverWatch following the merger.

Response to Paragraph 42:

EW Defendants lack sufficient information to form a belief as to the truth of the allegations in the first and third sentences of Paragraph 42, and on that basis, deny them. EW Defendants further respond that the selective quotation of unidentified documents and/or testimony in Paragraph 42 is taken out of context and misleading; and that the full content of that material speaks for itself. EW Defendants deny the allegations in the second sentence of Paragraph 41.

Paragraph 43:

In October 2021, as the time for initiating the competition was drawing closer, NSA surveyed the industry to determine which companies might be interested in pursuing the OPTIMAL DECISION prime contract. NSA contacted 14 companies to gauge their interest, but on October 14, it received only two letters of intent to pursue the prime contract, one from Booz Allen and one from EverWatch's subsidiary ACES, Inc. No other firms responded.

Response to Paragraph 43:

EW Defendants admit that EverWatch's subsidiary ACES, Inc. submitted a letter of intent to pursue the prime contract for OD. EW Defendants lack sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 43, and on that basis, deny them.

Paragraph 44:

NSA repeated the survey in early 2022, with identical results. On April 13, it again received two letters of intent to pursue the prime contract, one from Booz Allen and one from EverWatch's subsidiary ACES, Inc. No other companies submitted letters.

Response to Paragraph 44:

EW Defendants admit that EverWatch's subsidiary ACES, Inc. submitted a letter of intent to pursue the prime contract for OD, after EverWatch signed the Merger Agreement with BAH.

EW Defendants lack sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 44, and on that basis, deny them.

Paragraph 45:

Based on these surveys and its understanding of industry participants and their plans, NSA does not expect to receive proposals for OPTIMAL DECISION from any companies other than Booz Allen and EverWatch.

Response to Paragraph 45:

EW Defendants admit that EverWatch's subsidiary ACES, Inc. intends to submit a bid for the prime contract for OD. EW Defendants lack sufficient information to form a belief as to the truth of the remaining allegations in Paragraph 45, and on that basis, deny them.

Paragraph 46:

The parties recognize that they are the only competitors for OPTIMAL DECISION. In the due diligence process preceding the merger agreement, Booz Allen noted that EverWatch management "projects having a [redacted] pWin [win probability] given only one other competitor in the mix (Booz Allen)" and noted that it had "[redacted] pWin to reflect Booz Allen's [redacted] pWin." Booz Allen's corporate development staff told the consultants assisting with the due diligence process that EverWatch is the only other competitor. Earlier, the EverWatch manager leading the effort to win OPTIMAL DECISION had made clear to a key subcontractor that Booz Allen is the competition.

Response to Paragraph 46:

Paragraph 46 asserts legal conclusions and argument, to which no response is required. To the extent a response is required, EW Defendants deny the allegations in the first sentence of Paragraph 46. With respect to the second and third sentences in Paragraph 46, EW Defendants lack sufficient information to form a belief as to the truth of the allegations and deny those allegations on that basis. EW Defendants further respond that the selective quotation of unidentified written material in Paragraph 46 is taken out of context and misleading; and that the written material speaks for itself. EW Defendants deny the last sentence in Paragraph 46 because the Complaint does not identify a "key subcontractor." EW Defendants deny the remaining allegations in Paragraph 46.

Paragraph 47:

Other companies in the industry agree that there will be no competitors for OPTIMAL DECISION other than Booz Allen and EverWatch. One member of the EverWatch team noted that "we have team meetings and we discuss are there any competitors, you know, try to collect market information. I haven't heard any data from anyone that anyone else is bidding it."

Response to Paragraph 47:

EW Defendants lack sufficient information to form a belief as to the truth of the allegations in Paragraph 47 and on that basis, deny those allegations. EW Defendants further respond that the selective quotation of unidentified written material in Paragraph 47 is taken out of context and misleading; and that the document speaks for itself.

Paragraph 48:

The merger would result in a monopoly on the OPTIMAL DECISION project because, if the merger proceeds, Booz Allen will ultimately hold the contract regardless of what happens in the bidding process. The expectation that the companies would merge—an expectation that was created by the merger agreement—therefore immediately reduced the incentives of the companies to compete aggressively for OPTIMAL DECISION.

Response to Paragraph 48:

Paragraph 48 asserts legal conclusions and argument that do not require a response. To the extent that a response is required, EW Defendants deny the allegations in Paragraph 48.

Paragraph 49:

Before they agreed to merge, and based on a draft RFP released by the NSA, the companies were preparing for the proposal drafting and submission process, the most intense phase of competition. The final RFP is expected to be released in the immediate future, and as the companies wait for it they are gathering information, negotiating with their subcontractors, preparing rough drafts of their proposals, assembling materials for presentations, and developing sample questions that might be asked in the oral examinations that will follow submission of the proposals. These steps require significant investments of time and resources, but these investments are necessary to be able to prepare a competitive proposal that will secure the five- year contract and its [redacted] revenue stream.

Response to Paragraph 49:

EW Defendants admit that EverWatch identified the OPTIMAL DECISION bid as a potential opportunity in 2019 and has since identified subcontractors to assist it in bidding on the opportunity if and when the RFP is released. EW Defendants further admit that EverWatch will continue to take all necessary steps to compete vigorously for the OD contract. EW Defendants lack sufficient information to admit or deny the allegations in Paragraph 49 as to BAH or the OD RFP release date, and deny the allegations on that basis. EW Defendants deny the remaining allegations in Paragraph 49.

Paragraph 50:

Booz Allen's agreement to acquire EverWatch eliminated almost all incentive for either company to compete vigorously for OPTIMAL DECISION. No matter how competitive or uncompetitive the bids are, it is the merged firm that would own the contract and derive the profits from it. Even if Booz Allen loses the bid, it knows the merged firm will win the contract; aggressive bidding at this point would serve only to reduce the profits of the merged firm. Higher prices, on the other hand, will increase those profits. EverWatch has an additional incentive to avoid aggressive bidding, as it may embarrass and upset its future owner and employer. Because of this proposed merger, both companies now are incentivized to reduce their investments and other terms and increase prices to NSA, whether they bid separately or together.

Response to Paragraph 50:

Paragraph 50 asserts legal conclusions and argument that do not require a response. To the extent that a response is required, EW Defendants deny the allegations in Paragraph 50.

Paragraph 51:

In practice, NSA may not even receive two bids. If the merger is completed before bids are submitted, Booz Allen can decide to submit only one bid. And if the merger is only completed after the bids are submitted, the merged firm can withdraw the less profitable bid. NSA's review of the bids is expected to take several months, so the post-merger Booz Allen will have ample opportunity to withdraw one bid. As a result, even if the merger is not completed by the time bids are awarded, Booz Allen can effectively veto EverWatch's bid, should it prove too competitive. In addition, the merger agreement provided to the United States by the companies requires EverWatch to seek Booz Allen's approval before entering into any contract with a value of $500,000 or greater. Assuming the materials provided by

the companies accurately reflect their agreement, Booz Allen can effectively veto EverWatch's bid, should it prove too competitive.

Response to Paragraph 51:

EW Defendants lack sufficient information to form a belief as to the truth of the allegations in Paragraph 51 and on that basis, denies them.

Paragraph 52:

The merger agreement therefore already has substantially lessened competition and is likely to result in higher prices, lower-quality services, and less innovation for NSA's OPTIMAL DECISION project. The merger agreement therefore constitutes an unlawful restraint of trade and is illegal under Section 1 of the Sherman Act. Moreover, the substantial lessening of competition that is likely to result from the merger itself would violate Section 7 of the Clayton Act and is sufficient for the Court to enjoin the proposed merger.

Response to Paragraph 52:

Paragraph 52 asserts legal conclusions and argument that do not require a response. To the extent that a response is required, EW Defendants deny the allegations in Paragraph 52.

Paragraph 53:

New competitors will not join the competition for OPTIMAL DECISION in response to the proposed merger. NSA is expected to release the RFP in the immediate future and to require proposals to be submitted within 30 to 45 days, with oral presentations by the teams beginning immediately afterward. As noted above, EverWatch spent years assembling its team and developing its proposal. No new competitor would have sufficient time to assemble a team, negotiate subcontract terms, develop a draft proposal, and prepare for oral examinations in time to meet NSA's schedule.

Response to Paragraph 53:

EW Defendants lack sufficient information to form a belief as to the truth of the allegations in Paragraph 53 and on that basis, deny them.

Paragraph 54:

Delaying the OPTIMAL DECISION project is not an option. NSA has set the schedule for OPTIMAL DECISION based on a number of factors, not the least of which is the national security of the United States, which depends in part on NSA's ability to effectively utilize signals intelligence. Moreover, NSA cannot forego these services, so a delay in OPTIMAL DECISION would require it to extend the current MASON III contract, which

is held by Booz Allen. NSA would have little choice but to agree to Booz Allen's terms for that extension, as the agency would have no other options.

Response to Paragraph 54:

EW Defendants lack sufficient information to form a belief about the truth of the allegations Paragraph 54, and on that basis, deny them.

Paragraph 55:

The proposed merger is unlikely to generate verifiable, merger-specific efficiencies sufficient to reverse or outweigh the anticompetitive effects that are likely to occur.

Response to Paragraph 55:

Paragraph 55 asserts legal conclusions and argument that do not require a response. To the extent that a response is required, EW Defendants deny the allegations in Paragraph 55.

Paragraph 56:

In response to the antitrust investigation and facing the looming release of the OPTIMAL DECISION RFP, EverWatch engaged in a last-minute scramble to transfer its team leadership role to a much smaller corporate teammate. This transparent attempt to evade antitrust scrutiny does not restore the competition lost when the Defendants agreed to merge. More likely, as EverWatch steps back from this competition in an attempt to avoid antitrust scrutiny, the effect of this "remedy" will be to diminish the quality of the planned bid while still giving EverWatch an opportunity to charge higher prices for its contributions, thus enabling the very effects that the United States seeks to avoid in challenging this transaction. In any case, in order for the team to submit a bid, EverWatch would need to continue the work it has been doing, so it would remain the prime contractor in all but name.

Response to Paragraph 56:

Paragraph 56 asserts legal conclusions and argument that do not require a response. To the extent a response is required, EW Defendants deny the allegations contained in Paragraph 56. EverWatch admits only that it sought to constructively engage with DOJ to propose remedies to allay DOJ's concerns with respect to the OD bid. EverWatch did this in good faith because it was eager to close a transaction that is good for the government across multiple potential procurements, and wanted to promptly isolate and address the narrow issue of the OD bid that DOJ had raised as a concern. EW Defendants deny the allegations in Paragraph 56.

Paragraph 57:

The chosen subcontractor is approximately one-tenth the size of EverWatch, in terms of both personnel and revenue. The largest prime contract managed by the company to date is worth [redacted] and has [redacted] employees on it. In contrast, OPTIMAL DECISION is valued at [redacted] and is expected to employ [redacted] people. EverWatch is well-prepared for such a project, as it holds prime contracts as large as [redacted], employing [redacted].

Response to Paragraph 57:

Paragraph 57 asserts legal conclusions and argument that do not require a response. To the extent a response is required, EW Defendants lack sufficient information to form a belief about the truth of the allegations in Paragraph 57 and on that basis, deny them. EW Defendants admit that EverWatch intends to compete vigorously for the OD bid if and when NSA releases the RFP. EW Defendants deny the allegations in Paragraph 57.

Paragraph 58:

In practice, EverWatch effectively would need to "ghost prime" the project in order for the team to submit a bid, continuing to do all the work it is presently doing. A senior manager of the subcontractor selected by EverWatch stated that:

> **The program manager [EverWatch] would have more information than any single teammate because he would be the point where all of the program execution comes together. So there is a knowledge base that the program manager would develop that he would know that others would not. . . . [I]n the end all the data that's been collected, all the slides that have been completed, all the investment that's been made, that's owned by EverWatch. It's not owned by the team. So if – if that left, there's no way that information could be recreated if the RFP came out tomorrow.**

Put simply, without the full support of EverWatch, the team would not be able to submit a proposal on NSA's schedule for the OPTIMAL DECISION project. The prime contractor/subcontractor shell game thus does not change the fact that it is EverWatch that will determine how competitive its team is, and EverWatch has little incentive to help a Booz Allen rival win this bid.

Response to Paragraph 58:

Paragraph 58 asserts legal conclusions and argument that do not require a response. EW Defendants further respond that the selective quotation of unidentified testimonial material in

Paragraph 58 is taken out of context and misleading; and that the testimony speaks for itself. To the extent a response is required, EW Defendants deny the allegations in Paragraph 58.

Paragraph 59:

The United States hereby incorporates the allegations of paragraphs 1 through 58 above as if set forth fully herein.

Response to Paragraph 59:

Paragraph 59 consists of Plaintiff's incorporation of Paragraphs 1 through 58 to which no response is required. EW Defendants incorporate their Responses to Paragraphs 1 through 58 in response to Paragraph 59.

Paragraph 60:

The merger agreement has sharply reduced incentives for the Defendants to compete vigorously for OPTIMAL DECISION and therefore constitutes an unreasonable restraint of trade, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

Response to Paragraph 60:

Paragraph 60 asserts legal conclusions and argument to which no response is required. To the extent a response is required, EW Defendants deny the allegations in Paragraph 60.

Paragraph 61:

Unless enjoined, completion of the merger is likely to substantially lessen competition and tend to create a monopoly in interstate trade and commerce for the OPTIMAL DECISION contract, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

Response to Paragraph 61:

Paragraph 61 asserts legal conclusions and argument to which no response is required. To the extent a response is required, EW Defendants deny the allegations in Paragraph 61.

Paragraph 62:

Among other things, the proposed acquisition would:

a. eliminate significant present and future head-to-head competition between Booz Allen and EverWatch;
b. reduce competition generally in the relevant market;
c. cause prices to rise for the customer in the relevant market;

d. cause a reduction in quality in the relevant market; and
e. reduce innovation in the relevant market.

Response to Paragraph 62:

Paragraph 62 asserts legal conclusions and argument to which no response is required. To the extent a response is required, EW Defendants deny the allegations in Paragraph 62, including all subparts.

Paragraph 63:

Plaintiff requests that the Court:

a. adjudge and decree that the merger agreement between Booz Allen and EverWatch is unlawful and violates Section 1 of the Sherman Act, 15 U.S.C. § 1;
b. adjudge and decree that the proposed merger of Booz Allen and EverWatch would be unlawful and violate Section 7 of the Clayton Act, 15 U.S.C. § 18;
c. permanently enjoin and restrain Defendants and all persons acting on their behalf from consummating the proposed merger or from entering into or carrying out any other contract, agreement, plan, or understanding, the effect of which would be to combine Booz Allen and EverWatch;
d. permanently enjoin and restrain Defendants and all persons acting on their behalf from effectuating any provision of the Stock Purchase Agreement among Booz Allen, EverWatch, and EC Defense Holdings, LLC dated March 15, 2022;
e. award the United States the costs of this action; and
f. award the United States such other relief that the Court deems just and proper.

Response to Paragraph 63:

Paragraph 63 consists of Plaintiff's prayer for relief to which no response is required. To the extent a response is required, EW Defendants deny that Plaintiff is entitled to the relief sought in the Complaint or to any relief whatsoever.

EW Defendants deny the allegations in the Complaint, whether express or implied, that are not specifically addressed herein.

DEFENSES

EW Defendants expressly reserve the right to plead additional affirmative or other defenses should discovery reveal any such defenses in this case. EW Defendants assert the following defenses, without assuming the burden of proof on such defenses that would otherwise rest with Plaintiff.

1. The Complaint fails to state a claim upon which relief can be granted.
2. The harm Plaintiff alleges is not a result of, and is independent of, the Transaction and/or the Merger Agreement and is not the type of harm that the antitrust laws are designed to prevent.
3. Plaintiff's claims are too speculative to support any claim on which relief can be granted.
4. Plaintiff has failed to establish that the Merger Agreement constitutes an agreement in restraint of trade.
5. Plaintiff has failed to allege any appropriate product or geographic market.
6. Plaintiff has failed to establish that Defendants exercise market power with respect to any relevant market.
7. Plaintiff has failed to establish that the Transaction is likely to have any anticompetitive effect, whether unilateral or coordinated, or result in any anticompetitive harm to customers or consumers, in any relevant market.
8. The United States, which is the alleged customer at issue in the Complaint, has a variety of tools and options to ensure that it receives competitive pricing and terms.
9. Plaintiff has failed to establish that the Transaction is likely to have any anticompetitive effect in any relevant market because the OD bid is speculative.

NSA has not issued a request for proposal for OD and has not revealed the final terms of that request.

10. Plaintiff has failed to establish that the Transaction is likely to have any anticompetitive effect in any relevant market because federal procurement guidelines administered by NSA ensure that, irrespective of the transaction, NSA will be able to obtain modeling and simulation services on reasonable terms at a reasonable price.

11. Plaintiff has failed to establish that the Transaction is likely to have any anticompetitive effect in any relevant market because entry by new market participants and/or expansion by existing market participants will be timely, likely, and sufficient to undo any such effects.

12. Plaintiff's claims are barred, in whole or in part, because Defendants' conduct is protected under the Noerr-Pennington doctrine and under the Constitution of the United States.

13. To the extent not set forth above, Plaintiff's claims are barred, in whole or in part, because it is precluded and/or preempted by federal oversight of the conduct at issue and/or immune from scrutiny.

14. BAH's acquisition of EverWatch will be procompetitive. The transaction will result in overwhelming merger-specific efficiencies, cost synergies and other procompetitive effects that will benefit the government and other customers.

15. The injunctive relief that Plaintiff seeks is inconsistent with the public interest and the equities favor consummation of the Transaction.

EW Defendants have not knowingly or intentionally waived any applicable defenses and reserve the right to assert and rely upon other applicable defenses that may become available or apparent during discovery in this matter. EW Defendants reserve the right to amend or seek to amend their Answer and/or defenses.

Dated: July 22, 2022

/s/ Molly M. Barron

Molly M. Barron (Bar No. 19151)
Amanda P. Reeves (admitted *pro hac vice*)
Marguerite M. Sullivan (admitted *pro hac vice*)
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CERTIFICATE OF SERVICE

I hereby certify that on July 22nd, 2022, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the Sealed Version of Defendants Everwatch Corp., EC Defense Holdings, LLC, and Analysis, Computing & Engineering Solutions Inc.'s Answer and Defenses to the foregoing document to be served on July 22, 2022, upon the following in the manner indicated:

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