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As the CIS acknowledges, the "central provisions" of the Consent Order are the non-discrimination rules. Lockheed Martin believes that the basic requirements of those provisions, by their terms, are clear: Northrop Grumman must, inter alia: (1) supply competing prime contractors its payload "in a manner that does not discriminate in favor of its in-house proposal team against any other Prime Contractor on any basis;" (2) negotiate in good faith with competing prime contractors to enter into commercially reasonable teaming agreements that "shall not discriminate in favor of its in-house proposal team against any other Prime Contractor on any basis;" (3) provide information regarding its payload to its in-house proposal team and to any competing prime contractor; and (4) "make all personnel, resource allocation and design decisions regarding the payload on a non-discriminatory basis." See §IV.B.(1)(a), (b), (d), (e).

The scope of the "non-discrimination" rules is also made clear by the terms of these substantive provisions. Northrop Grumman must not discriminate "on any basis including but not limited to, price, schedule, quality, data, personnel, investment (including but not limited to, independent research and development), technology, innovations, design and risk." See §IV.B.(1)(a), (b).

Lockheed Martin submits that these "non-discrimination" rules as set forth in the substantive provisions of Section IV.B. of the Consent Order are clear and unambiguous and that there is no need to define the term "discriminate" as that term is used in Section IV.B. (We note that Congress saw no need to define the term "discriminate" in either the Robinson-Patman Act, 15 U.S.C. §13a, which prohibits certain price discrimination, or in statutes prohibiting discrimination by common carriers, see, e.g. 46 U.S.C. §1709.)

If the term "discriminate" is to be defined as it is used in Section IV.B., it should be clear and unambiguous, so as not to create confusion, and not create potential "loopholes," when read in conjunction with the substantive provisions (described above). In this regard, if it is deemed necessary to define the term at all we suggest "discriminate" be defined as: "to treat Northrop Grumman's in-house proposal team more favorably than any other competing prime contractor on any basis." Such definition would, we believe, be clear, but essentially duplicative of the substantive provisions (hence, our preference would be to omit any definition of "discriminate" entirely).

The existing definition of "discriminate" (in Section II.N.) creates confusion and potential "loopholes" and should not be made applicable to Section IV.B. or, in the alternative, should be modified in the manner suggested above. Specifically, we are concerned that Northrop Grumman could use the existing definition to favor itself in the supply of