

STATEMENT OF CONSIDERATIONS

REQUEST BY GENERAL MOTORS CORPORATION FOR AN ADVANCE WAIVER OF DOMESTIC AND FOREIGN INVENTION RIGHTS UNDER DOE COOPERATIVE AGREEMENT NO. DE-FC26-08NT04386, W(A)-09-003 CH-1467

The Petitioner, General Motors Corporation (GM) was awarded this cooperative agreement for the performance of work entitled, "Development of Production-Intent Hybrid Vehicle using Advanced Lithium-Ion Battery Packs with Deployment to a Demonstration Fleet." The purpose of the cooperative agreement is to speed development of one of the first commercially available, Original Equipment Manufacturer (OEM)-produced plug-in hybrid vehicles (PHEV). The project will develop, fully integrate, and validate the plug-in specific systems and controls by using GM's Global Vehicle Development Process (GVDP) for production vehicles. Additional details describing the scope and purpose of this cooperative agreement are provided in response to question 2 of the attached waiver petition. This waiver is only for inventions of GM made under this cooperative agreement.

The total estimated cost of the cooperative agreement is \$53,754,260 with GM providing \$43.75 million or 81.4% cost-share. DOE is thus providing the remaining \$10 million or 18.6%. The period of performance is sixty-eight (68) months from September 30, 2008.


In its response to question 5 of the attached waiver petition, GM has described its technical competence in the field of automotive technologies. The largest automotive company in the world, it designs, manufactures, assembles and sells cars and trucks, including automotive powertrain systems and components. It has a long history of industry leadership in the development of environmentally friendly automotive innovations. GM has extensive experience with developing electric-drive vehicles, including the original GM EV-1 electric vehicle, along with fuel cell vehicles in operation under the GM/DOE hydrogen fuel cell demonstration cooperative agreement. With respect to the subject cooperative agreement, GM has described its experience with production hybrids, listing several examples of light-duty vehicles. GM's response demonstrates its technical competency in the field of automotive technologies.

In its response to questions 9 and 10 of the attached waiver petition, GM states that the technology that is the subject of this project must compete against numerous other technologies being considered for use in automotive propulsion in attempts to improve energy efficiency. Competitive pressures in a robust automotive market with numerous manufacturers amid a wealth of competing technologies will necessarily mitigate any significant anti-competitive effect that could be created through the grant of this waiver. Therefore grant of the waiver will have a positive effect on competition and market concentration.

The subject contract will be modified to add the Patent Rights--Waiver clause in conformance with 10 CFR 784.12, wherein GM has agreed to the provisions of 35 U.S.C §§ 202, 203, and 204. This waiver clause will also include a paragraph entitled U.S. Competitiveness, in which GM agrees to substantial U.S. manufacture of subject inventions (attached hereto). Additionally, GM agrees not to transfer subject inventions to any other entity unless that other entity agrees to these same requirements.

Considering the foregoing, it is believed that granting the waiver will provide the Petitioner with the necessary incentive to invest resources in the commercialization of the results of the agreement in a fashion which will make the agreement's benefits available to the public in the shortest practicable time. In addition, it would appear that grant of the above requested waiver would not result in an adverse effect on competition nor result in excessive market concentration.

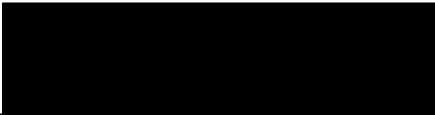
Therefore, in view of the objectives and considerations set forth in 10 CFR 784, all of which have been considered, it is recommended that the requested waiver, as set forth above, be granted.


Mark P. Dvorscak
Assistant Chief Counsel
Office of Intellectual Property Law

Date Jan. 20, 2009

Based on the foregoing Statement of Considerations and the representations in the attached waiver petition, it is determined that the United States and the general public will best be served by a waiver of rights of the scope described above, and therefore the waiver is granted. This waiver shall not apply to any modification or extension of this agreement, where through such modification or extension, the purpose, scope, or cost of the agreement is substantially altered.

CONCURRENCE:


Patrick B. Davis
Program Manager
Vehicle Technologies Program, EE-2G

Date 2/2/09

APPROVAL:


m Paul A. Gottlieb
Assistant General Counsel for Technology
Transfer and Intellectual Property, GC-62

Date 2/4/09

(t) U. S. COMPETITIVENESS The Contractor agrees that any products embodying any waived invention or produced through the use of any waived invention will be manufactured substantially in the United States unless the Contractor can show to the satisfaction of the DOE that it is not commercially feasible to do so. In the event the DOE agrees to foreign manufacture, there will be a requirement that the Government's support of the technology be recognized in some appropriate manner, e.g., recoupment of the Government's investment, etc. The Contractor agrees that it will not license, assign or otherwise transfer any waived invention to any entity unless that entity agrees to these same requirements. Should the Contractor or other such entity receiving rights in the invention undergo a change in ownership amounting to a controlling interest, then the waiver, assignment, license, or other transfer of rights in the waived invention is suspended until approved in writing by the DOE.