

STATEMENT OF CONSIDERATIONS

REQUEST BY GENERAL MOTORS CORPORATION FOR AN ADVANCE WAIVER OF DOMESTIC AND FOREIGN INVENTION RIGHTS UNDER DOE COOPERATIVE AGREEMENT NO. DE-EE0000014, W(A)-10-09, CH-1549

The Petitioner, General Motors Corporation (GM) was awarded this cooperative agreement for the performance of work entitled, "Improving Energy Efficiency by Developing Components for Distributed Cooling and Heating". The purpose of the agreement is to develop distributed thermoelectric (TE) HVAC components to supplement the central HVAC system in vehicles and to integrate and test the components in a 5-passenger demonstration vehicle. This waiver is only for inventions of GM made under this cooperative agreement.

The total estimated cost of the cooperative agreement is \$5,097,593 with GM providing \$2,548,796 or 50% cost-share. DOE is providing the remaining 50% cost share. The period of performance is forty-three months from October 1, 2009 through October 31, 2012.

In its response to question 5 of the attached waiver petition, GM has described its technical competence in the field of automotive technologies. GM states that it has more than a 100 year history of developing advanced automotive technologies and bringing those innovations to the marketplace in production vehicles. GM has experienced staff with industry-recognized experts in Research and Development, Advanced Engineering, and Engineering that have access to the latest equipment and extensive support facilities. GM further states it has a history of working with governmental, business, and non-governmental organizations to assess the impact of its products to develop approaches that improve its environmental performance. GM has over 100 patents and patent applications related to HVAC technologies, which are listed in Exhibit A of the petition. 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 it anticipates licensing new technologies to other automotive manufacturers or suppliers to maximize the full benefits of available scale economies resulting from large-scale introduction. GM states that this licensing minimizes any anticompetitive effects that could be associated with the introduction of new technology into the marketplace. Competitive pressures in a robust automotive market with numerous automotive manufacturers amid a wealth of competing technologies will necessarily mitigate any significant anti-competitive effect that might possibly be created if this waiver petition is granted. 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 neither 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.

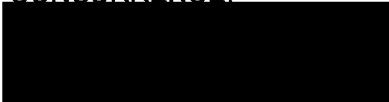


Mark P. Dvorscak
Assistant Chief Counsel
Office of Intellectual Property Law

Date Feb. 17, 2010

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, EE-2G
Program Manager
Vehicle Technologies Program

Date: 8/10/10

APPROVAL:



~~Paul A. Gottlieb~~ John T. Lucas, Acting
Assistant General Counsel
for Technology Transfer and
Intellectual Property

Date: _____

(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.