

Statement of Considerations

REQUEST BY PETITIONER MICRON TECHNOLOGY INC., FOR AN ADVANCE WAIVER OF DOMESTIC AND FOREIGN RIGHTS IN SUBJECT INVENTIONS AND ADVANCED PERMISSION TO ASSERT COPYRIGHT IN TECHNICAL DATA AND COMPUTER SOFTWARE IN THE COURSE OF OR UNDER NTESS, LLC SOLICITATION 2045198 UNDER PRIME CONTRACT NO. DE- NA0003525; DOE WAIVER DOCKET W(A)2022-0I0

Micron Technology, Inc. (Petitioner) has made a timely request for an advance waiver to worldwide rights in Subject Inventions made in the course of or under NTESS, LLC Solicitation No.2045198 entitled "Advanced Memory Technology (AMT)" under NTESS Prime Contract No. DE-NA0003525. Petitioner is also requesting advanced permission to assert copyright in technical data and computer software generated under the proposed subcontract. The scope of the work is to examine technology roadmaps and materials for memory systems and explore processor and memory systems architecture options for JD-stacked memory technology. Micron Technology, Inc. will work in collaboration with Advanced Memory Devices (AMD) and Sandia National Laboratories (SNL) under a Subcontract with AMD.

The dollar amount of this segment of the program is \$2,804,880.00 of which Petitioner is providing a 40.2% cost share of \$1,121,852.00. The period of performance is approximately three (3) years.

With respect to items 5-9 of the waiver petition, Petitioner's experience and expertise will contribute substantially to the development of the inventions and copyrighted works made under the subcontract. Micron Technology is the No. 3 supplier of memory worldwide, including DRAM, NANO and NOR memory. Micron was founded in Boise, Idaho in 1978 and in 2022 was listed as #127 on the Fortune 500.

Micron has a NAND Center of Excellence in Singapore and a DRAM Center of Excellence in Taiwan. Micron owns and operates manufacturing and testing facilities across six countries- Wholly owned wafer fabrication facilities are in United States (Idaho, Virginia), Singapore, Japan, and Taiwan. Wholly owned module assembly and test facilities are in China, Malaysia, Taiwan, and Singapore.

The petitioner Micron is also one of the top U.S. patent recipients and has contributed to over 51,000 patents in memory and storage and other technologies worldwide.

Petitioner has made a significant investment of private funding which will directly assist and further promote development of the work to be performed under the subcontract. Petitioner spends hundreds of millions of dollars per fiscal quarter for research and development focused on advancing the technology of memory and storage devices and systems. Additionally, a portion of that investment goes toward exploring off roadmap technological advances in memory and storage that have potential direct benefit to critical U.S. Government computing challenges and to maintaining and advancing U.S. commercial competitiveness. Petitioner has agreed to accept the attached DOE waiver terms and conditions if the requested waiver is granted. Specifically, Petitioner agrees to abide by the conditions set forth at 35 U.S.C. §202-204 relating to the Government license, march-in rights, preference for U.S. Industry, as well as U.S. Competitiveness.

The granting of this waiver will assist Petitioner in maintaining and extending a technology leadership position among foreign competitors and potentially play a significant role in ensuring U.S. competitiveness in the manufacture of semiconductor memory and storage systems. The research done under this program

would allow for technologies that have promising commercial value to also address the often-unique requirements of critical government systems. The benefit of this is in ultimately producing memory and storage technologies in volume that benefit both commercial and critical government applications thus reducing the cost to the government.

Data Rights

While the Bayh-Dole Act only applies to the allocation of patent rights. Petitioner has also requested to have advanced rights to assert copyright in computer software and technical data without the Contracting Officer's prior approval. The Petitioner notes that DOE is funding the project with the goal of providing DOE insights into potential future implementation of memory and storage devices and how to specify and implement memory centric computing architectures. Petitioner states that it is committed to commercializing the project technology but recognizes the challenges of doing so in the context of a highly competitive global memory market with significant foreign competition. Memory is a cross-cutting technology that impacts multiple CPU manufacturers, network manufacturers, and storage manufacturers. Speed in being able to present and distribute successful results of the contemplated research, to customers, industry partners and other stakeholders, is essential to Petitioner's commercialization efforts. Allowing Petitioner to swiftly present project data to relevant third parties (but with copyright protection already attached to cutting-edge project data) will materially enhance Petitioner's commercialization efforts.

The Government reserves a government license in both the copyrighted technical data and computer software. For data other than computer software, the Petitioner grants to the Government, and others acting on its behalf, a paid-up, non-exclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government. For computer software, the Petitioner grants to the Government, and others acting on its behalf, a paid-up, non-exclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government. However, the limited Government-use license in copyrighted software will revert to a broad Government license, which allows the Government to distribute copies to the public, if either the Petitioner abandons the commercialization of the software or DOE march-in rights are exercised, for example, where the Petitioner has not taken effective steps to commercialize the software.

Similar waiver authorizations were approved in the past for the following clause in the Appendix. It was suggested that an authorization of the waiver petition for software rights and data protection be granted for a limited time of up to five years.

Referring to item 10 of waiver petition, granting of the waiver should have little effect on competition since there are several technology options, this being one of many previously or yet-to-be developed in the marketplace. Moreover, Petitioner's technology will require significant additional developments prior to commercial introduction. Thus, there should not be an undue market concentration of Petitioner's products.

A request for US manufacture waiver is being processed separately.

In view of the objectives and considerations set forth in 10 CFR §784.4, all of which have been considered, it is recommended that the requested waiver for worldwide patent rights in SubjectInventions be granted, as well as advanced permission to assert copyright in technical data and computer software.


Cannen Ekstrom
NNSA Patent Attorney

Date: 

Based on the foregoing Statement of Considerations and the representations in the attached Waiver Petition, it is determined that the interest of the United States and the general public will best be served by a waiver of the U.S. and foreign patent rights and advanced permission to assert copyright, and therefore, the waiver is granted. This waiver shall not apply to a modification of extension of the subcontract where, through such a modification or extension, the purpose, scope, or cost of the subcontract has been substantially altered.

CONCURRENCE:

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Federal Program Manager
Office of Advanced Simulation and Computing &
Institutional Research and Development Programs
National Nuclear Security Administration
US Department of Energy

Date: 2022-NOV-07

APPROVAL:



Brian Lally
Assistant General Counsel
For Technology Transfer and
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