

STATEMENT OF CONSIDERATIONS

REQUEST BY SYPRIS ELECTRONICS LLC, FOR AN ADVANCE WAIVER OF DOMESTIC AND FOREIGN INVENTION RIGHTS UNDER DOE COOPERATIVE AGREEMENT NO. DE-OE0000543, W(A)-2011-040, CH-1619

The Petitioner, Sypris Electronics, LLC (Sypris) was awarded this cooperative agreement for the performance of work entitled, "Centralized Cryptographic Key Management (CKMS)". According to the response to question 2 of the waiver petition, the CKMS project deals with the problem of managing cryptographic keys for large scale deployment of devices using a centralized system. The system controls, using policies, the generation, distribution, and destruction of keying material. The project also considers the problem of manufacturing devices such that they can be effectively authenticated when deployed. This waiver is only for inventions of Sypris made under this cooperative agreement.

7 The total estimated cost of the cooperative agreement is \$3,614,863 with DOE providing 58% of the cost, or \$2,112,965. Sypris is cost sharing 22% or \$795,898. The period of performance is from February 21, 2011 through February 21, 2014.

In its response to question 5 of the attached waiver petition, Sypris has described its technical competence in the field of key management and cryptography. It states that it has extensive experience in supporting the National Security Agency's (NSA) Electronic Key Management System (EKMS), including installation, maintenance, and training of EKMS workstations. Sypris states it also has experience in the development and fielding of applications that run on EKMS including the Key Depot User Application Software (UAS) and the Local Management Device (LMD) UAS which run on top of the Tier 2 Local COMSEC Management Software (LCMS) to facilitate ease of use for operator creation and distribution of encrypted key material. Sypris has describe other areas of its technical competence in this area, and has also provided a table of its patent profile, listing an issued U.S. patent, three patent applications, as well as some U.S. Design Patents. Sypris' response demonstrates its technical competency in the field of key management and cryptography.

In its response to question 10 of the attached waiver petition, Sypris states that grant of the waiver is not expected to reduce competition or concentrate the existing market. Various key management solutions will likely have application alongside those developed in this program. In addition, a diverse set of key management solutions will be required for Smart Grid technology that will be provided by different vendors. 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 Sypris 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 Sypris agrees to substantial U.S. manufacture of subject inventions (attached hereto). Additionally, Sypris 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.

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

Date: *May 25, 2011*

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:

[REDACTED]
Carol Hawk, Ph.D., OE-10
Cybersecurity for Energy Delivery Systems
Program Manager
Office of Electricity Delivery and
Energy Reliability

Date: *10/18/2011*

APPROVAL:

[REDACTED]
John T. Lucas
Assistant General Counsel
for Technology Transfer and
Intellectual Property

Date: *10/19/2011*

(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.