

STATEMENT OF CONSIDERATIONS

REQUEST BY CONOCOPHILLIPS COMPANY FOR AN ADVANCE WAIVER OF DOMESTIC AND FOREIGN INVENTION RIGHTS UNDER DOE COOPERATIVE AGREEMENT NO. DE-FC26-99NT40659 W(A)-04-052, CH-1221

The Petitioner, ConocoPhillips Company was awarded this cooperative agreement for the performance of work entitled, "Testing of ConocoPhillips' Sorbent for Removal of Sulfur from Syngas at High Temperature" ("S Zorb Sulfur Removal Technology" or "S Zorb SRT"). This Integrated Methanol and Power Production from Clean Coal Technologies (IMPPCCT) project was originally awarded to Global Energy Inc in 1999 under the Early Entrant Coproduction Plant solicitation. ConocoPhillips is the current owner of the IMPPCCT project having purchased the E-gas gasification technology from Global Energy in July 2003; assignment of the project to ConocoPhillips has occurred. The purpose of the cooperative agreement is to develop an engineering design for a plant to coproduce methanol and electric power from the gasification of coal and other carbonaceous feedstocks. The work is part of the IMPPCCT for the Wabash River. Phase I, a feasibility study, has been completed. The objective of this Phase II is to conduct research and development to enhance the development and commercial acceptance of the coproduction technology, which integrates the gasification and methanol production technologies. More specifically, investigation of ConocoPhillips' S Zorb SRT process for sulfur removal is being evaluated in bench-scale slipstream testing at the Wabash River Energy Ltd gasification facility. Sorbent capacity, activity, and impact of contaminants in the syngas stream will be determined.

The total estimated cost of the cooperative agreement is \$2,168,943, with \$1,255,015 budgeted for Phase II. The DOE share is 65% or \$815,760. ConocoPhillips is providing the remaining 35% or \$439,255. The period of performance is from May 1, 2003 through September 30, 2005.

In its response to question 5 of the attached waiver petition, ConocoPhillips has described its technical competence in the field of sulfur removal for refinery and syngas applications. Its predecessor companies, Conoco and Phillips, have been developing these technologies for many years, and ConocoPhillips has devoted significant resources to the development of the S Zorb SRT process. The S Zorb sorbent is a descendant of Z Zorb, developed for syngas desulfurization in the late 1980's and early 1990's. A representative listing of ConocoPhillips' numerous patents on sulfur removal processes, catalysts, and sorbents is included in the answer to this question. ConocoPhillips' response demonstrates its technical competency in the field of sulfur removal for refinery and syngas applications.

In its response to question 10 of the attached waiver petition, ConocoPhillips states that grant of the waiver request will have a minimal effect on competition and market concentration in the field of sulfur removal. There are other sulfur removal projects sponsored by DOE, and other firms are developing and testing in pilot plant scale sulfur removal catalysts and processes. There are also other non-metal based catalysts being investigated, with DOE funding some of this work. Although grant of the waiver will assist ConocoPhillips in developing extensions to its S Zorb technology, it should not hinder others' efforts in developing catalyst systems different from the S Zorb technology. Thus grant of the waiver will not place ConocoPhillips in a preferred position: it will allow it to remain competitive, and therefore have a positive effect on competition and market concentration.

The subject cooperative agreement will be modified to add the Patent Rights--Waiver clause in conformance with 10 CFR 784.12, wherein ConocoPhillips 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 ConocoPhillips agrees to substantial U. S. manufacture of subject inventions (attached hereto). Additionally, ConocoPhillips agrees not to transfer subject inventions to any other entity unless that other entity agrees to these same requirements. The petitioner has further agreed to modification of the data clause of the subject cooperative agreement (48 C.F.R. 952.227-14) by adding paragraph (k), Alternative VI, concerning contractor licensing of data


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
Intellectual Property Law Division

Date: Oct 4, 2004

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. 

 1/16/04
George Rudins
Deputy Assistant Secretary
Office of Fossil Energy
Coal and Power Systems

APPROVAL:


Paul A. Gottlieb
Assistant General Counsel
for Technology Transfer and
Intellectual Property

12-20-04

(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.