

Department Memorandum

Idaho Transportation Department

**DATE:** August 8, 2017**Program Number(s)**

TO: District 1-6
 ACHD Deputy Director
 LHTAC Deputy Administrator

Key Number(s)

FROM: Kevin Sablan *ks*
 Design/Traffic Services Engineer

Program ID, County, Etc.

RE: Proprietary Products Approval
 Supersedes DMC Memo #1 dated 4/9/2012

Proprietary Products Approval

On federally funded projects, **two items** is established as the reasonable number of proprietary products to be listed for contract items to meet the intent of *23 CFR 635.411 – Material or Product Selection*. **Proprietary products approval is required when listing less than two products on contract items.**

- I. On “Projects of Division Interest” with proprietary products is identified as FHWA approval (PODI-PP); Public Interest Findings (PIF), Certifications, and Experimental Product Work Plans (EPWP) require FHWA approval.
- II. On non-PODI-PP projects, District Engineers approve their own proprietary products requests (both PIFs and Certifications) and EPWPs. Consultation with ITD HQ subject matter experts (SME) during the approval process is at the district’s discretion.
- III. On local public agency (LPA) non-PODI-PP projects **with** district oversight, PIFs & EPWPs are approved by the respective District Engineer. LPA proprietary products certifications require concurrence from the District Engineer.
- IV. On LPA non-PODI-PP projects **without** district oversight, including ACHD & LHTAC administered projects; PIFs & EPWPs are approved by the State Design/Traffic Services Engineer. LPA proprietary products certifications require concurrence from the State Design/Traffic Services Engineer.

Send a copy of approved PIFs, Certifications, and EPWPs to the FHWA Idaho Division Office (Idaho.FHWA@dot.gov). Save an electronic copy of the approval in the appropriate Project Wise project folder. Use standard file naming convention with one of the following added at the end: .PP-PIF (for public interest findings), .PP-Certification (for certifications), or .PP-Experiment (for experiments).

To avoid a perceived conflict with ITD Standard Specifications for Highway Construction Section 106.14-*Trade Names and Alternatives*, identify that the listed sole sourced proprietary product(s) is/are the only acceptable option(s).

Background

In certain cases, projects require specifying a proprietary product to meet a particular need or function. FHWA will not participate, directly or indirectly, in payment for any premium or royalty on any patented or proprietary material, specification, or process specifically set forth in the plans and specifications for a project, unless:

1. The item is purchased or obtained through competitive bidding with equally suitable unpatented items, or
2. ITD/local public agency certifies either that the proprietary or patented item is essential for synchronization with the existing highway facilities or that no equally suitable alternative exists, or
3. A PIF is approved for a proprietary product when other acceptable products are available, or
4. The item is used for research or for a special type of construction on relatively short sections of road for experimental purposes. This requires an EPWP to be in place for the project.

If a project requires specifying a proprietary product for reasons 2 or 3 (listed above), it may be approved if it can be found that its utilization is in the best interest of the public.

Proprietary product documentation will typically fall into one of two categories: Certifications or PIFs.

1. A Certification is used if a product is essential for synchronization or if the contracting agency specifies a unique product for which no equally suitable alternative exists.
2. A PIF is used if a contracting agency elects to require a specific product when other acceptable products are available.

Additional information for PIF and Certification requests, including documentation & justification, is outlined in *Section 455.01: Sole Source/Certification & Public Interest Findings (PIF)* of the Roadway Design Manual. Additional guidance and Questions/Answers regarding PIFs, Certifications, and EPWPs can be found at: <http://www.fhwa.dot.gov/programadmin/contracts/011106qa.cfm>.

cc: COO, DESA, DEPPA, DE1-6, DES/DEPP Managers, GARVEE Manager, FHWA, ACHD (D. Bevins)