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Department of Transportation

PROPRIETARY PRODUCTS REVIEW AND CERTIFICATION

PURPOSE:

This procedure provides the process for the Department to certify local agency and Department project requests for the use of proprietary products or processes under **23 CFR 635.411 Material or Product Selection**. The authority for the Department to assume the responsibility for the approval of patented and proprietary products on the National Highway System (NHS) projects is formalized in the **Florida Federal-aid Partnership Agreement, Topic No. 700-000-005**.

AUTHORITY:

Sections 20.23(4)(a) and 334.048(3), Florida Statutes (F.S.)

SCOPE:

This procedure applies to employees and organizational units in the Department involved in the preparation, design, review and approval of plans [BK1].

Definitions:

Agency: Any state, county, district, municipality, department, division, board, bureau, commission, or other separate unit of government created or established by law as defined in **Section 119.011(2), F.S.**

Contracting Agency: An Agency that is requesting the use of a proprietary product in the Contract Package.

Contract Package: The plans and specifications prepared during the design phase and used by construction personnel to build a project.

Department: The Florida Department of Transportation.

EOR: Engineer of Record - The professional engineer who signs, dates, and seals the Contract Package in accordance with **Section 471.025, F.S.** and **Rule 61G15-23, F.A.C.**

Experimental and Research Project: A project incorporating a material, process, method, equipment item, traffic operational device, or other feature that: (1) has not been

sufficiently tested under actual service conditions to merit acceptance without reservation in normal highway construction, or (2) has been accepted but needs to be compared with alternative acceptable features for determining their relative merits and cost effectiveness.

FHWA: Federal Highway Administration

Initiator: The person designated as the submitter of the proprietary product certification form on behalf of an Agency. The EOR may serve as the initiator.

PODI: Projects of Division Interest

Proprietary Product: A sole source or patented product or process. A product or process is also considered proprietary if it is identified by a plan note or specification so narrowly defined that only a sole source or patented product or process can meet the requirements.

Public Interest Finding (PIF): A document that is created by an agency when more than one acceptable product or process available for use and an agency seeks to limit purchase to a specified product. It documents the reasonableness of the agency's minimum needs and the best method to meet these needs consistent with the requirement for the broadest practical competition.

Special Funding/Evaluation Projects: A project that incorporates products or processes that FHWA is promoting through special funding/evaluation programs (e.g. Highways for Life, Innovative Bridge Research and Deployment Program, Innovative Pavement Research and Deployment Program, etc.)

Synchronization: to make things visually or functionally go together or work together.

Unique or No Suitable Alternative: limited to one of a kind, or without equal or equivalent.

1. GENERAL

When a proprietary product is identified in the Contract Package, this **Proprietary Products Certification (Certification)** procedure and form must be used. This certification should be completed by the time the design has reached 60% Plans. A denied request can be resubmitted for reconsideration with supplemental information.

This procedure is not to be used in lieu of Design or Utility Exceptions and Variations but may be required as an additional step. Also, this procedure is not to be used for Experimental, Research, or Special Funding/Evaluation Projects. When more than one

acceptable product or process is available for use and the Department or local agency seeks to limit purchase to a specified product or process, a Public Interest Finding (PIF) must be submitted in lieu of obtaining a certification with this procedure.

2. RESPONSIBILITIES

- 1) The Department assigned Project Manager is responsible for the following activities:
 - a) Communicating with the initiator,
 - b) Ensuring completeness of the documentation,
 - c) Assisting the District Design Engineer or Turnpike Design Engineer in the evaluation of the justification,
 - d) Ensuring all Certification requests are processed in accordance with this procedure.
 - e) Maintaining and archiving all requests, documentation, correspondence, and Certifications for proprietary products with applicable project files,
 - f) Forwarding the package to the FDWA Division Administrator when a project is a PODI.
- 2) The District Design Engineer or Turnpike Design Engineer is responsible for the following:
 - a) Assigning a Project Manager,
 - b) Evaluating and approving Certification requests for projects within their District when documentation is factually and technically supported in accordance with **Section 4**,
 - c) Evaluating and making a recommendation for Certification requests on a PODI project within their District.

3. PROPRIETARY PRODUCT CERTIFICATION PROCEDURE

- 1) When the Initiator submits a Certification request to the Department, the District Design Engineer or Turnpike Design Engineer will assign a Project Manager.
- 2) Each assigned Project Manager shall review request package of information and ensure that it contains the following documentation:
 - a) Cover Letter
The cover letter is the **Proprietary Products Certification Form, Form No. 630-020-07** for the **Certification** procedure. The appropriate certification statement must be marked on the form and the document signed by the initiator.

b) Justification

Justifications must contain supporting documentation that provide an understanding of the request and factually and technically support the request in accordance with **Section 4**.

The assigned Project Manager should consult with appropriate technical Department personnel to evaluate the package for **Certification**. The assigned Project Manager may request additional documentation from the initiator to assist with the evaluation and supplement the justification. The assigned Project Manager will make a recommendation regarding the request's approval and then forward the package and the recommendation to the District Design Engineer or Turnpike Design Engineer.

- 3) The District Design Engineer or Turnpike Design Engineer shall evaluate the package for **Certification** and the assigned Project Manager's recommendation and then determine if the request should be approved. When the District Design Engineer or Turnpike Design Engineer makes the decision, the Certification request package will be returned to the assigned Project Manager.
 - 1) If the District Design Engineer or Turnpike Design Engineer determines that the request should be approved, the District Design Engineer or Turnpike Design Engineer shall mark the appropriate certification statement on the form, assign a termination date and sign the document. If the District Design Engineer or Turnpike Design Engineer has identified any limitations regarding the proprietary product use on the project, a description of those limitations shall be included on the completed Certification form.
 - 2) If the District Design Engineer or Turnpike Design Engineer determines that the request should be rejected, the District Design Engineer or Turnpike Design Engineer shall provide an explanation for the rejection.
- 4) The assigned Project Manager shall provide a copy of the **Certification** with the signed certification or a notice and explanation of rejection to the initiator. The District or Turnpike assigned Project Manager shall post the Certification and justification on the Department web site and archive all documentation, correspondence, and certifications for proprietary products with applicable project files.

4. JUSTIFICATION DOCUMENTATION REQUIREMENTS

The District or Turnpike assigned Project Manager and District Design Engineer or Turnpike Design Engineer must evaluate the Certification request justification documentation in accordance with this section. The initiator's justification documentation must factually and technically support why the sole use of the proprietary product is both

reasonable and necessary to fulfill the project need. The assigned Project Manager shall ensure that the documentation includes, but is not limited to, the following information:

- 1) Description of the project need for the proprietary product,
- 2) Factual and technical supporting evidence for Synchronization (see **Section 4.1**) or Unique need (see **Section 4.2**),
- 3) Explanation how the evidence links it to the project need, and
- 4) Factual and technical supporting evidence that no alternatives are available.

The extent of the evaluation and details should be appropriate for the value and complexity of the product. This justification documentation must be used to support the Department's decision to approve the use of a proprietary product.

A case must not be made solely on the basis of:

- Cost saving
- Time saving
- Similarity to other designs.

The initiator may also base the current Certification request on the use of a previously approved Certification. When this occurs, the assigned Project Manager shall ensure the justification includes project specific details and explanations that factually and technically link the use of the proprietary product to the previously approved Certification, and provide documentation that the factors supporting the justification of the previously approved Certification have not changed..

4.1 SYNCHRONIZATION

At least one of the following factors must be used to evaluate the documentation supporting a Certification request based on synchronization:

- **Function:** the proprietary product is necessary for the satisfactory operation of the existing facility,
- **Aesthetics:** the proprietary product is necessary to match the visual appearance of existing facilities,
- **Logistics:** the proprietary product is interchangeable with products in the Contracting Agency's maintenance inventory.

In addition, it is advisable for the initiator to include additional documentation that factually and technically supports the following factors as they relate to synchronization:

- Lifecycle: the relative age of existing systems that will be expanded and the projected life of the proposed proprietary element in relation to the remaining life of the existing elements,
- Size/extent of products and systems to be synchronized to/with, and the relative cost of the proprietary elements compared with replacing the elements requiring synchronization,
- Training costs for staff, such as significant training required to effectively maintain and operate an unfamiliar product.

4.2 UNIQUE OR NO SUITABLE ALTERNATIVE

At least one of the following factors must be used to evaluate the documentation supporting a Certification request based on unique or no suitable alternative:

- How the proprietary product requirement will benefit the public,
- The unique needs that exist and how the proprietary product addresses those needs,
- Why a higher standard for safety or other critical need exists and how the proprietary product addresses that need,
- An evaluation of the pool of potential products and a description of why other products cannot meet the Contracting Agency's needs,
- Cost/Benefit analysis (this factor can only be used to support other factors).

5. TRAINING

<http://www.dot.state.fl.us/specificationsoffice/PackagePreparation/WritingAids/Default.shtm>

<http://www.fhwa.dot.gov/construction/cqit/propriet.cfm>

6. FORMS

Proprietary Products Certification, Form No. 630-020-07