

# Proprietary Products Process

630-020-005-a

---

DESIGN EXPO, 2014

A solid orange horizontal bar at the bottom of the slide.

Karen Byram

State Product Evaluation Administrator

---

PRESENTER



The FDOT Certification Procedure and Form that I will describe are under development have not been officially approved by FDOT.

630-020-005-a

The actual implementation date of this procedure and has not been determined.

A formal announcement with implementation date will be released. Until that time, use of this procedure and form are optional.

# Definition

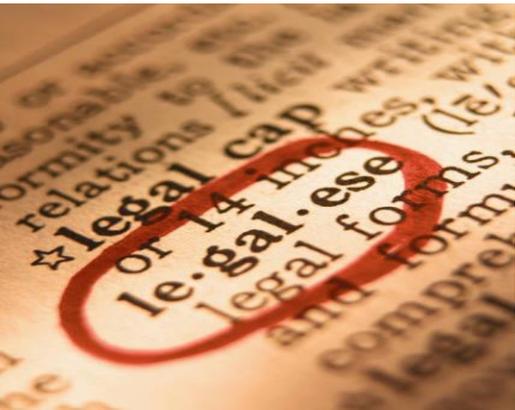
---

## ***Patented or Proprietary Product:***

A product, specification, or process identified in the plans as a "brand" or trade name (e.g. 3M, Corten).

A product or a process so narrowly specified that only one provider can meet the specification or requirements.

Process Example: *For shoulder, use Company X's Super-Duper Asphalt Base Edge Compactor<sup>®</sup>*



# Narrowly Defined Specifications

---

A specification cannot be used to allow proprietary products to be inappropriately or inadvertently required for Federal-aid projects.

Do not assume if a national organization (e.g. AASHTO, ASTM) has issued a specification that it is non-proprietary.

If more than one product is available that meets the requirements:

- Initiator must supply a list of 2 or 3 vendors to the FDOT Project Manager for verification.

If the specification reduces the pool products to a single proprietary product:

- The Proprietary Product Process must be used

# When Does This Process Apply?

---

Whenever State or Federal funds are used or might be used on a project.

- Note: Since this process should be completed by the 60% Design Phase, it should be assumed that all projects will use Federal funds; Complete Certification
- Note: When the State or FHWA is not paying for the proprietary product, i.e. using designated funds, FDOT Project Manager needs to coordinate with LAP Coordinator.  
(email is sufficient)

# Who Initiates the Request?

i.e. Initiator Definition

---

Within the requesting Contracting Agency....

Ideally the Person with the knowledge needed for the Justification should initiate

If Local Agency requests – Local Agency personnel

- or Local Agency Consultant

If FDOT contracts out the Plan set – Consultant designing the plans

- FDOT personnel identify certain needs that must be included in the Plan set – then the FDOT person that identified the need is the initiator.

Ex: District Traffic Operations Engineer IDs equipment for the intersection.

It can be anyone taking on the responsibility and signature

# FDOT Proprietary Product Certification Process

---



1. The Initiator will submit the request for the use of the proprietary product to the Department's District or Turnpike Design Project Manager. The submittal will consist of
  - A. Certification form completed with signature from the Initiator; And
  - B. Documentation package to support the form request.
2. The Project's Design Manager will receive the package and identify the appropriate office within the Department to conduct the review and make recommendations for approval (in writing).
3. The Project's Design Manager will then forward the package (including review and recommendations) to the District Design Engineer for approval. The District Design Engineer will sign the Certification portion of the form when the request is approved and summarize any special conditions or limitations.
4. The form, complete with signature, and document package will remain with the project documentation.

## Proprietary Product Certification

To: \_\_\_\_\_ Date: \_\_\_\_\_  
FDOT District Design Engineer

Financial Project ID: \_\_\_\_\_ New Const. ( ) RRR ( )  
Federal Aid Number: \_\_\_\_\_  
Project Name: \_\_\_\_\_  
State Road Number: \_\_\_\_\_ Co./Sec./Sub: \_\_\_\_\_  
Begin Project MP: \_\_\_\_\_ End Project MP: \_\_\_\_\_  
Full Federal Oversight: No ( ) Yes ( ) Note: if Yes, submit to FHWA Director.

A justification and all supporting documents must be attached to this document.  
Mark the appropriate certification:

"I, \_\_\_\_\_ of the \_\_\_\_\_  
Print Name of Initiator Position title Name of agency

do hereby certify that in accordance with the requirements of 23 CFR 635.411(a)(2),  
Mark Appropriately:

- ( ) that this patented or proprietary item is essential for synchronization with existing highway facilities.
- ( ) that no equally suitable alternative exists for this patented or proprietary item.

\_\_\_\_\_  
Signature Date

### For Department Use Only

"I, \_\_\_\_\_  
Print Name Position title

of the Florida Department of Transportation, do hereby approve this certification request made in accordance with the requirements of 23 CFR 635.411(a)(2).

Mark Appropriately:

- ( ) that this patented or proprietary item is essential for synchronization with existing highway facilities.
- ( ) that no equally suitable alternative exists for this patented or proprietary item.

Identify any conditions and/or limitations on an attached memo.

\_\_\_\_\_  
Signature Date

### For FHWA Use Only (use for Full Federal Oversight projects)

"I, \_\_\_\_\_  
Print Name Position title

of the Federal Highway Administration, do hereby approve this certification.

Identify any conditions and/or limitations on an attached memo.

\_\_\_\_\_  
Signature Date

# Certification Form Requirements

The Certification form consists of two parts:

1. The Initiator completes the top portion
2. District (or Turnpike) Design Engineer signs and 'Certifies' the request.
3. Additional Step:

FHWA needs to sign and certify the request for PODI projects

(Projects of Division Interest)



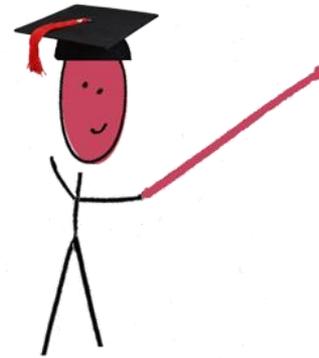
Flowchart

Initiator Identifies the Need

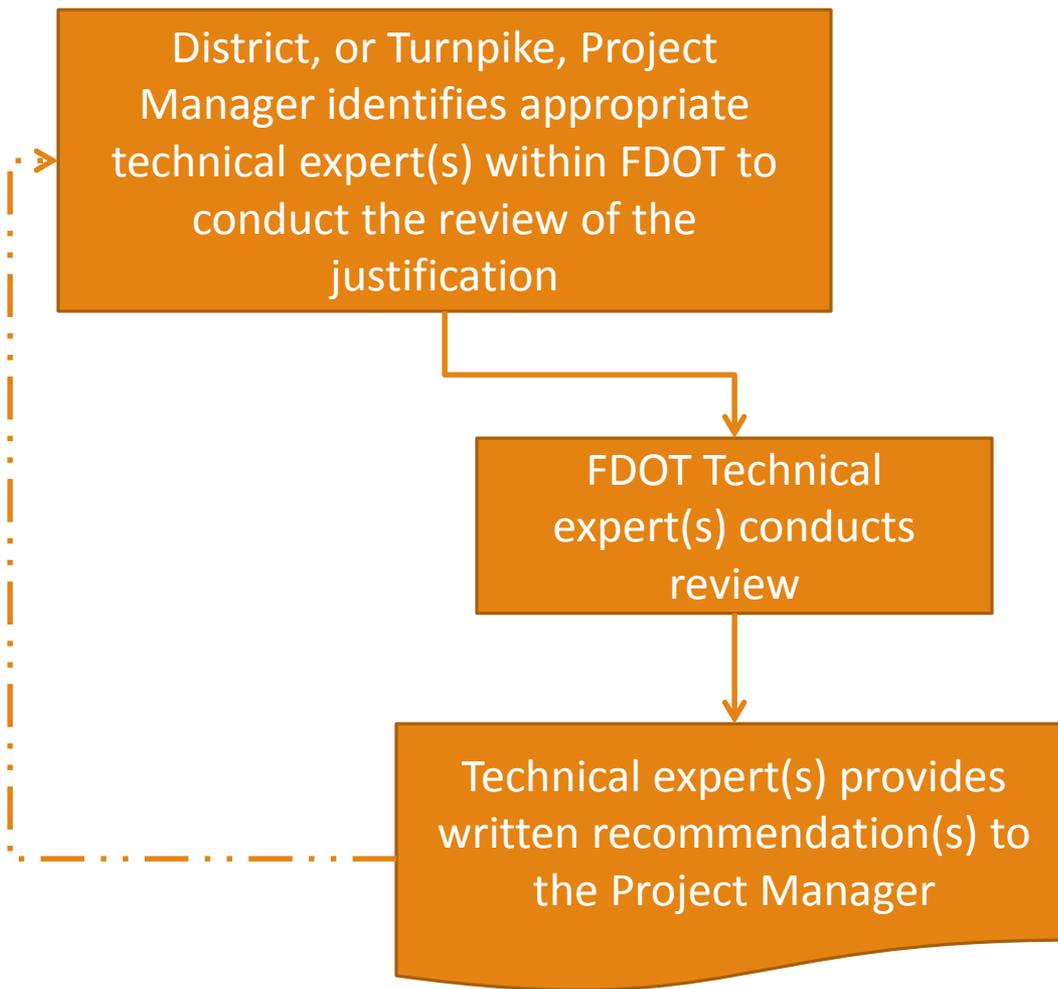
Writes Justification

Completes top part of form

Submits justification and form to District or Turnpike Design Project Manager



Phase 1.



Note: Communication with Initiator if OK information is necessary, but any extra info used for recommendation must be documented.

# FDOT may Certify Justifications Based on Only 2 Reasons:

---

1. Synchronization

2. Unique Need

For any other Justification basis:

- the FDOT is not allowed to approve.
- use another process, or
- FHWA must approve use

# What is Synchronization?

---

Matching, coordination or conformance of a device to a previous standard ;

Or integrating a process into an established method of doing business.

# Synchronization

---

Justification must be based on at least one of the following:

- Function
  - Necessary for satisfactory operation of existing facilities.
- Aesthetics
  - Necessary to match visual appearance of existing facilities.
- Logistics
  - Interchangeable with existing inventory.

# Synchronization Cont..

---

Justification can include these additional factors to support Function , Aesthetics and Logistics. Note: These factors cannot be used alone.

## Lifecycle

- Relative age of existing system and remaining project life.
- This one is especially important to include when it is a high cost item(s).

## Size/Extent

- Relative cost of proprietary element compared to replacing the synchronization elements.
- This can include cost of training maintenance personnel.
- Useful when it is a high cost item(s) for a functional or logistical justification.

Cost can never be used as the sole reason to reject competition.

# What is Unique Need?

---

Sole source,

One of a kind,

Has no equal product or process capable of meeting the need



# Justification Example 1

---

On a Federal-aid contract in the downtown area the city would like to use a patented Signal Pole product.

If the City uses aesthetic synchronization as the justification, they could provide:

1. Previous portions of the Downtown Beautification Plan where the City has installed the Signal Pole in adjacent intersections; or
2. Documentation that the Signal Pole has been required on previous projects in the vicinity and that the Signal Pole is necessary for compatibility with those previously-constructed projects.
3. Additional info to support justification should include: Describe the review of the other styles from several other major manufacturers that were evaluated before this product was selected. (Identify when review was conducted and which manufacturers were reviewed.)

# Justification Example 1 cont.

---

What if the synchronization documentation is weak or not available?

City could provide sufficient documentation to support Unique Need .

1. Include documentation of a formally approved City Council Downtown Beautification plan that identify this Signal pole; or
2. Additional info to support justification would include:
  1. A statement from the State Historic Preservation Officer requiring that new light poles be similar in appearance to Signal Poles matching the appearance from 1800, or
  2. Describe the review of the other styles from several other major manufacturers that were evaluated before this product was selected. (Identify when review was conducted and which manufacturers were reviewed.)

Justification needs to demonstrate that the Society or City is committed to that style for that area and/or future synchronization.

**AND.....**

# Intent of Justification

---

To prove the choice benefits the public in spite of restricting competition-

Not to prove the initiator's choice of product.

Remember: This process limits competition.

# Justification Example 2

---

The FDOT is doing a resurfacing job that involves an exit onto a local agency roadway. When the job is finished, the ramp will be turned over to the local agency for operations. The local agency has stated that they require 3M products for all signs and traffic markings and want the ramp signs and traffic markings to meet their requirements before the ramp is turned over to them.

## Justification Options:

### 1. Synchronization

- Function
  - Necessary for satisfactory operation of existing facilities.
- Logistics
  - Interchangeable with existing inventory.
- Aesthetics
  - Necessary for visual continuity or appeal.

### 2. Unique Need

Note: For this process, more is better.

# Justification Example 2 cont.

---

## Function

- Necessary for satisfactory operation of existing facilities.

Example: Agency asserts that the difference in the intensity of the sheeting will distract drivers or is insufficient for drivers coming onto their portion.

Review response: Denied.

Reason: The sheeting will be the same as on the FDOT project portion and those products have been determined safe by FDOT engineers..

- Agency could reapply and supply additional justification Agency needs to provide research reports supporting their assertion and documentation that demonstrates the significant difference between their portion of the roadway and the FDOT portion.

# Justification Example 2 cont.

---

- Logistics
  - Interchangeable with existing inventory.

Example: Agency asserts that the traffic markings will not last as long as the 3M materials they have identified. They provide documentation they have accumulated showing durability of the 3M product vs another QPL product.

FDOT response: Denied.

Reason: The traffic marking materials would be the same as on the FDOT portion and that has been determined to have sufficient durability by our engineers. Any difference in durability of individual traffic marking materials have no impact on Maintenance or Inventory since they are not repaired – they are replaced.

- Agency could re-apply and provide additional justification to support. Example: Replacing the traffic marking materials earlier than anticipated would be a hardship on the agency's Maintenance Dept. (would need to prove with data)

# Justification Example 2 cont.

---

Unique Need Justification:

Agency asserts that the difference in the intensity and other factors of the traffic marking materials will distract drivers or is insufficient for drivers coming onto their portion.

Review Response: Denied:

Reason: Since the QPL products meet MUTCD and FDOT standards. Traffic markings naturally vary along a roadway distances as the materials age and are replaced.

- Agency could reapply and explain why their portion of the roadway is significantly different from the FDOT portion. This would require research reports or Safety studies, etc..

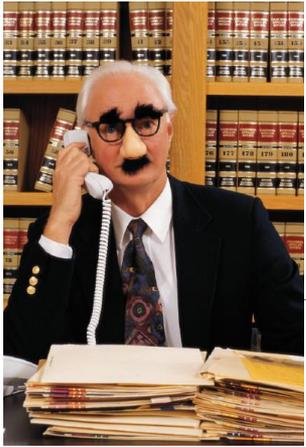
# Justifying Unique Need

---

Must show a reasonable attempt to investigate and rule out alternatives (i.e. restricting competition)

1. Describe and support reason for higher standard
2. Identify 2 or 3 of the next closest product and Explain why each does not work
  - Use products from different manufacturers
3. If no competing product exists, provide information on the product search
  - Identify 2 or 3 of the largest competitors to selected supplier and explain they to not provide product. Use your market area.

Cost cannot be used as the sole reason to reject competition.

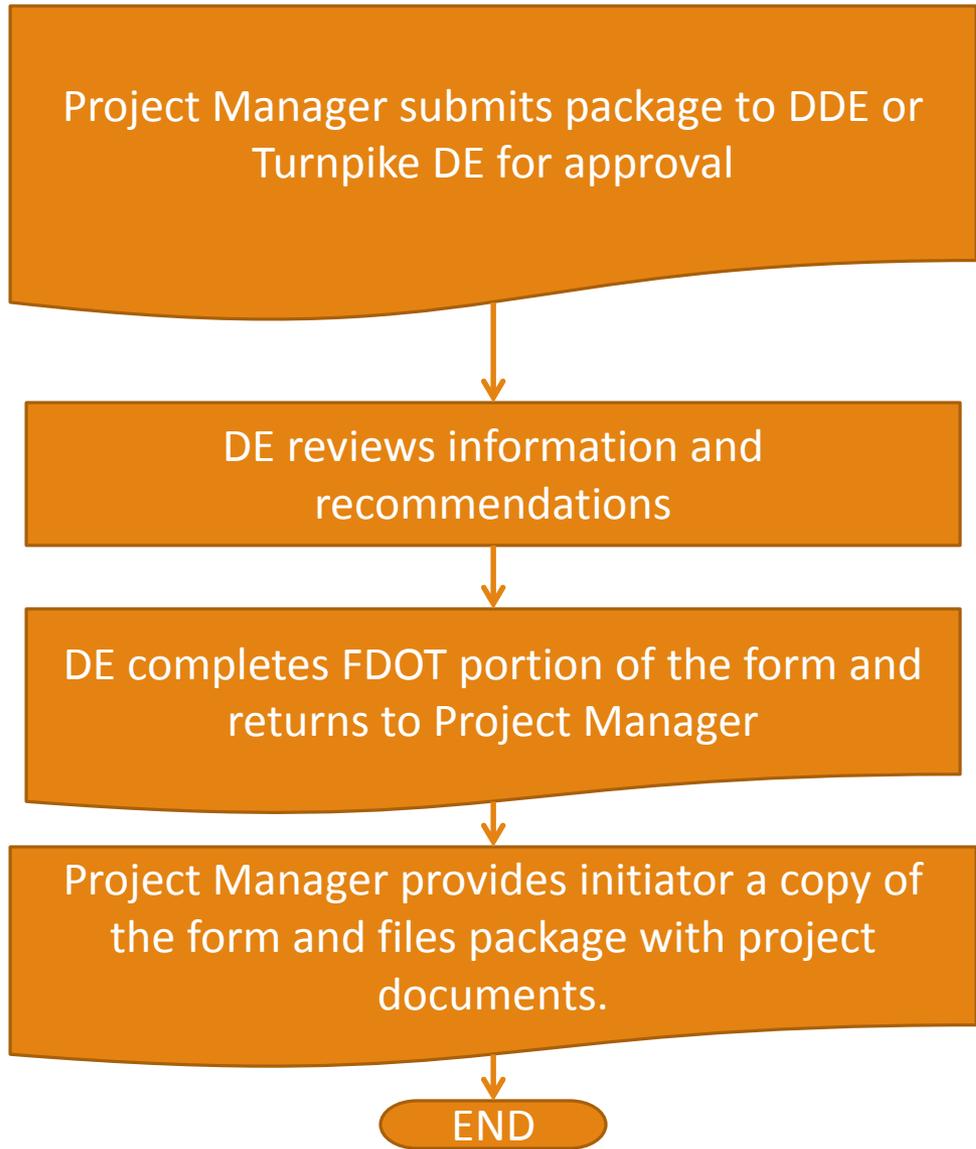


---

Can the FDOT require the initiator to provide additional supporting documentation?

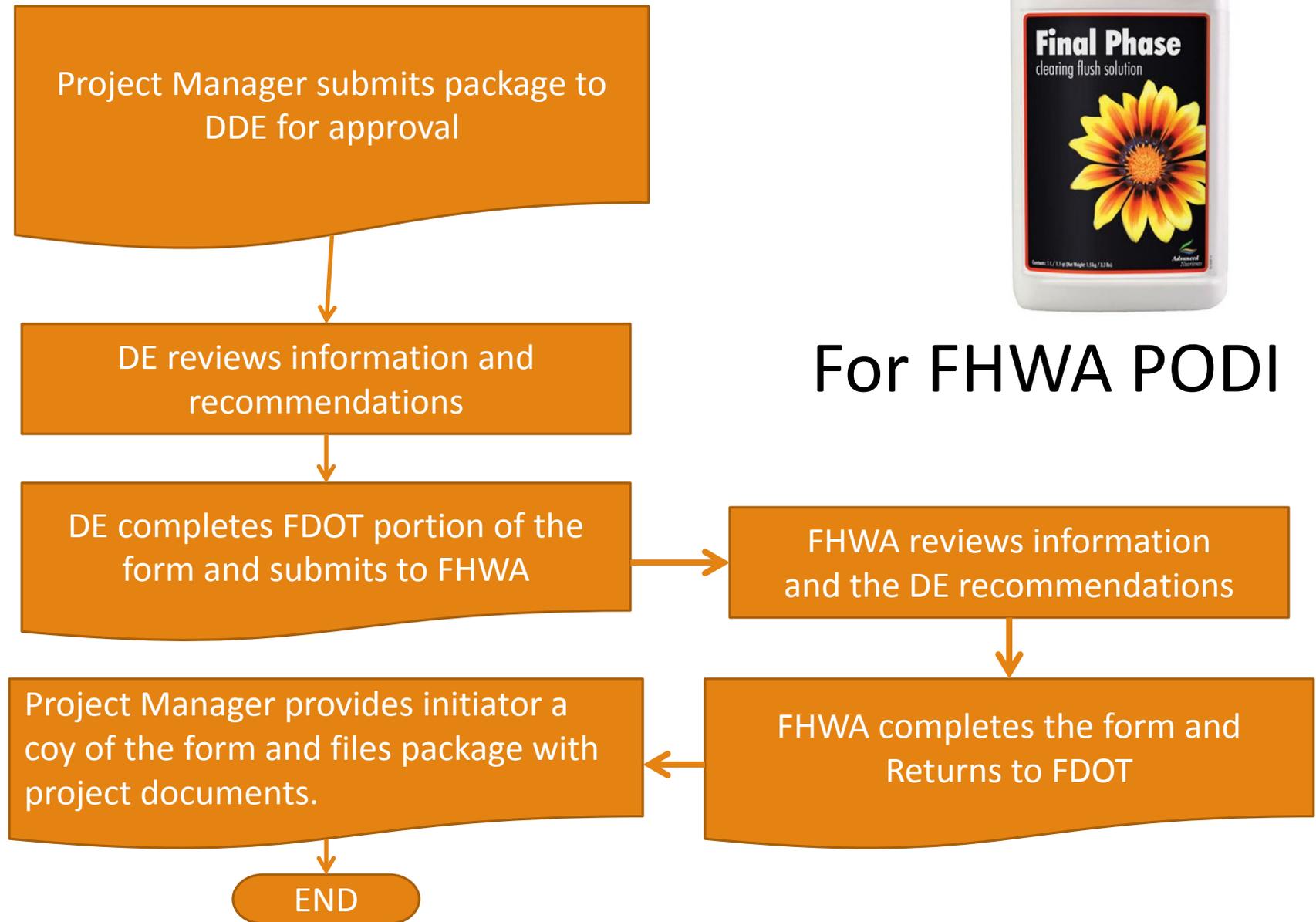
FDOT may request, but not require, additional information.

However, failure to submit additional information may result in a denied request.





## For FHWA PODI



# Non Proprietary Examples

---

## Use of 'Or Equal' Phrase is Never Allowed

### 1. Bidding equally against a non-proprietary product or process.

- Requires the use of 'or' in the bid naming something specific

Example: Coat all fencing with one coat of Sherwin Williams Steel-Spec Epoxy Primer part numbers B58R8 and B58V8 or galvanize in accordance with ASTM XXXXX .

Note: Use of this method to identify multiple products is discouraged.

### 2. Experimental product or process included (require TSP)

### 3. Special Program

- Example: Highways for Life
- Must follow requirements of the special program

### 4. Public Interest Finding (PIF)

# Public Interest Findings

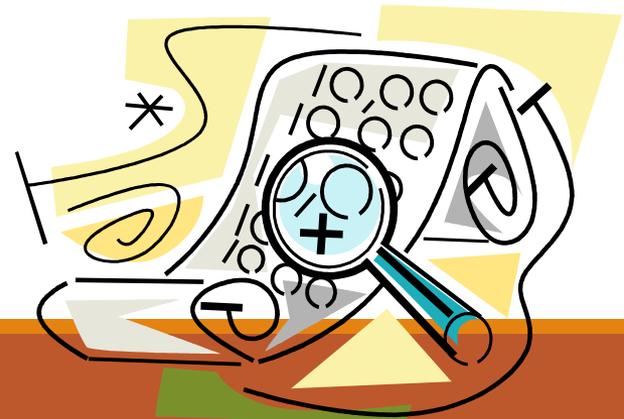
---

A Certification and a PIF are different in that:

A PIF is used if a contracting agency elects to require a specific product when other acceptable products are available. Selection cannot be justified using Synchronization or Unique Need.

Example: Traffic Light Hangers:

A State Legislative requirement is not justification for Unique Need, still needed PIF approved.



# QARs

---

Product Evaluation and FHWA staff will be conducting QARS on project justifications and documentation in accordance with 630-020-005-a

Karen Byram  
State Product Evaluation  
Administrator  
(850) 414-4353  
email: [karen.byram@dot.state.fl.us](mailto:karen.byram@dot.state.fl.us)

---

QUESTIONS?