

D4 Local Program Gazette

Proprietary Products



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Proprietary Products

What do I need to provide in order to use?

To better explain the requirements of satisfying the item on the Constructability and Production submittal checklists for proprietary products, please see the following guidance.

In most cases requiring a proprietary product due to system compatibility, a letter from the maintaining agency stating why they require a specific product should suffice. At this time, we are not requesting any documentation for signalization items, as this has previously been coordinated with the various maintaining agencies within the district. However, as an example, there are many irrigation items often found in Technical Special Provisions that will require a letter from the maintaining agency.

Below is further guidance from FHWA.

Under what circumstances may the FHWA participate in the costs of a proprietary product on a Federal-aid project?

A certification by the contracting agency, as provided in 23 CFR 634.411(a)(2), that the specified proprietary product is either:

1. Necessary for synchronization with existing facilities; or
2. A unique product for which there is no suitable alternative.

What factors should be considered when basing the use of a proprietary product on synchronization? Synchronization may be based on:

1. function (the proprietary product is necessary for the satisfactory operation of the existing facility),
2. aesthetics (the proprietary product is necessary to match the visual appearance of existing facilities),
3. logistics (the proprietary product is interchangeable with products in with an agency's maintenance inventory)

or a combination of the three.

This may be best demonstrated by the following examples:

- A Federal-aid construction project in City A includes the replacement of traffic signals and controllers in the downtown area. The City's existing signal control system is compatible with only Controller X. As part of its Downtown Beautification Plan, the City has specified Signal Pole Y for all intersections in the downtown area. To ensure FHWA participation, the STA or LPA should provide sufficient documentation to support both functional and aesthetic synchronization, which could merely consist of a statement from the City justifying its decision to specify Controller X (functional synchronization with control system) and Signal Pole Y (aesthetic synchronization with signal poles).
- A Federal-aid construction project includes the replacement of existing substandard guardrail end terminals with those conforming to NCHRP 350 requirements. Upon project completion, the County will be responsible for the maintenance of the project. End Terminal T, which is NCHRP 350-compatible, has been constructed on other County-maintained routes in the vicinity. Due to scarce financial and labor resources, it desires to stock only one type of NCHRP 350-compatible end treatment, and has requested that the STA or LPA to specify Terminal T. To ensure FHWA participation, the STA or LPA should address these logistical issues in its supporting documentation.

What information should be included in a Certification by a STA or a LPA?

The certification must include a statement by the appropriate official attesting that the proprietary product is essential for synchronization with existing facilities; or that no equally suitable alternative exists (23 CFR 635.411(a)(2)). If deemed necessary, the Division Administrator may, pursuant to 23 CFR 1.5, request documentation or other information supporting the STA's certification. Such documentation and information may include:

1. A description of how the proprietary product requirement will benefit the public.
 - a. What unique needs are being addressed that result in no equally suitable alternate, e.g., high percentage of older population?
 - b. Are there identified safety locations or critical decision points that would justify a higher standard?
2. An evaluation of the pool of potential products, and a description of why these products cannot meet the STA's or local agency's needs.
3. An estimate of additional costs incurred as a result of this proprietary product requirement.

What should be included in a public interest finding (PIF)?

While there is no specific format for a public interest finding, the level of documentation will be dependent upon the specific nature of product and projects involved. In general, the PIF should document the reasonableness of the STA's or LPA's minimum needs and the best method to meet these needs consistent with the requirement for the broadest practical competition. The

supporting material may include engineering and economic considerations, product availability and compatibility, logistical concerns, and other unique considerations.

For your information, the current version of the FHWA "Contract Administration Core Curriculum Participant's Manual and Reference Guide" contains guidance regarding the content and review of PIFs. The manual also contains guidance about product selection, specifications and other contract administration topics, and is available on the FHWA Internet site at <http://www.fhwa.dot.gov/programadmin/contracts/coretoc.cfm>

What are the differences between a Certification and a PIF?

A Certification and a PIF are different in that:

- A Certification is used if a unique product is required to meet project requirements.
- A PIF is used if a specific product is to be required when other acceptable products are available.

Further discussion of Certifications and PIFs is contained in the FHWA Office of Safety-issued memorandum titled "INFORMATION: Guidelines for Public Interest Findings and Certifications for Retroreflective Sign Sheeting", at the following links:

http://safety.fhwa.dot.gov/roadway_dept/night_visib/policy_guide/memo_retroguid/, with a pdf document [here](#).

This complete document from FHWA may be found at [this link](#):