

When may proprietary products (sole sourcing) be included on LAP projects?

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**Purpose:** To determine when the use of propriety products on federal aid projects is acceptable.

**Details:** Sole sourcing, or the use of propriety products, refers to the practice of using a product or process identified in the plans or specifications as a brand or trade name. It may also be a product so narrowly specified that only a single provider can meet the specification. The Code of Federal Regulations, [23 CFR 635.411](#), states “federal funds shall 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:

- Such patented or proprietary item is purchased or obtained through competitive bidding with equally suitable unpatented items.
- The State Transportation Department approves a Certification provided by the Local Agency, either that such patented or proprietary item is essential for synchronization or no equally suitable alternate exists.
- Such patented or proprietary item is used for research or for a distinctive type of construction on relatively short sections of road for experimental purposes.”

When synchronization is used as the basis to justify the inclusion of a proprietary product on a federal aid project, the following factors should be considered:

- 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 within the agency’s existing maintenance inventory)

For justifications on the basis of synchronization and, also, when no other acceptable products are available, the agency must provide a Certification to the Florida Department of Transportation (FDOT) which supports the use of the specific proprietary product or performance standard.

The FDOT District Design Engineer approves all Certifications, except on Full Federal Oversight projects; the Federal Highway Administration (FHWA) must provide approval before the specific proprietary product, or performance measure, may be used.

When other acceptable products exist, but the contracting agency desires a specific proprietary product, the contracting agency must write a Public Interest Finding (PIF). The PIF must justify why the desired product is necessary and reasonable. FHWA approves all PIFs.

**Summary of the differences between the types of documentation required** [[FHWA Q&A, Question 18](#)]:

“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.”

“A **PIF** is used if a contracting agency elects to require a specific product when other acceptable products are available.”

**References:** Code of Federal Regulations: [23 CFR 635.411\(a\)\(1\)](#); [23 CFR 635.411\(a\)\(2\)](#); [23 CFR 635.411\(d\)](#); [FHWA Q&A Regarding 23CFR635.411](#)

**Exceptions:** With approval, work determined to be non-participating may be included and must be paid for with local funds.

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