

QPL and Proprietary Products

How to incorporate proprietary products into a design and be in compliance with FHWA rules



Presenter:

Karen Byram,
Product Evaluation Administrator





Information ?i →

Objectives:

- Qualified Products List (QPL)
 1. Basis of the QPL and web access
 2. How the QPL is identified on plans and accepted on jobs
 3. Defective Products
- Proprietary Products
 1. State Approval Process
 2. When the process is used
 3. Certification/Documentation requirements



The Qualified Products List Fiction About the QPL

- A List of “Favorite Things”
- If a Product is Not on the QPL, It Cannot be Used
- All Manufactured Products are Covered by the QPL
- QPL is a Way to Specify a Proprietary Product
- QPL is an Endorsement of Products by FDOT





The QPL is:

THE QPL IS (In 25 Words or Less):

“A List of Pre-Approved Products That May Be Relied Upon as Meeting FDOT Specifications, Standards or Other Specified Criteria”



**SECTION 6
CONTROL OF MATERIALS**

6-1 Acceptance Criteria.

6-1.1 General: Acceptance of materials is based on the following criteria. All requirements may not apply to all materials. **Use only materials in the work that meet the requirements of these Specifications.** The Engineer may inspect and test any material, at points of production, distribution and use.

“Show Me the Spec”



The Qualified Products List Evaluation for QPL Inclusion

Evaluation for QPL Includes:

- Product Evaluation Application
- Test Data, Certifications, Material Product Safety Info, Test Results, Product Drawings
- Reviewed by FDOT Technical Expert(s)
- Possible Installation on Field Test Deck for Verification

Does it MEET IMPLEMENTED DOT SPECS/STANDARDS?



Using The FDOT State Specs Office Website

A screenshot of the Florida Department of Transportation (FDOT) State Specs Office website. The page features a navigation menu at the top, a main content area with a "Specifications & Estimates" section, and a sidebar with various links. A yellow arrow points to the "Specifications & Estimates" section. The website includes a search bar, a navigation menu with links like "Home", "Business Partners", and "Employment", and a main content area with a "Specifications & Estimates" section. Below this section is a "How to Contact Specifications and Estimates" section with links for "Have a Question?", "Frequently Asked Questions", and "Staff List". There is also an "Announcements" section with a link to "Click to register and for more information!". The footer includes the "2012 Design Training Expo" logo and a "2012 Design Training Expo" logo.

Have a Question? [Frequently Asked Questions](#) [Staff Listing](#)

STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION

2010

[\[2010 Book in .pdf \(file size = 3604kb\)\]](#)

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Note: File size ranges from 10kb - 300kb.

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DIVISION II - GENERAL CONSTRUCTION OPERATIONS

The FDOT Office Website

QPL Additional information by Specification is available

Qualified Products List (QPL)

To report problems with a product listed on the QPL, please complete a [Notification of Altered Deficiency](#)

Specification 641 Prestressed Concrete Poles

QPL Number	Other References	Product ID	Manufacturer	Approval Date
S641-0302	011725 Vendor Drawing	FL-2 Pedestal	Dura-Stress Inc. P.O. Box 490779 Lansburg FL 34749 (352) 787-1422	7/16/1991 Last Recert 1/28/2011
Comments and Limitations	12 Ft. Must be provided from a Qualified Producer with current QC Plan Approved for job lettings on or before December 31, 2007			
S641-0303	011725 Vendor Drawing	FL-2 Service	Dura-Stress Inc. P.O. Box 490779 Lansburg FL 34749 (352) 787-1422	7/16/1991 Last Recert 1/28/2011
Comments and Limitations	12-45 Ft. Must be provided from a Qualified Producer with current QC Plan Approved for job lettings on or before December 31, 2007			
S641-0304	011725 Vendor Drawing	FL-3	Dura-Stress Inc. P.O. Box 490779 Lansburg FL 34749 (352) 787-1422	7/16/1991 Last Recert 1/28/2011
Comments and Limitations	12-45 Ft. Must be provided from a Qualified Producer with current QC Plan Approved for job lettings on or before December 31, 2007			
S641-0302	011725 Vendor Drawing	FL-4	Dura-Stress Inc. P.O. Box 490779 Lansburg FL 34749 (352) 787-1422	7/16/1991 Last Recert 1/28/2011
Comments and Limitations	20-50 Ft. Must be provided from a Qualified Producer with current QC Plan Approved for job lettings on or before December 31, 2007			

Specific Product information

Plans Preparation

- All QPL products are referenced in the plans as a Specification or Design Index reference.
 - ‘Use a Type B Epoxy meeting the requirements of S926.’ And ‘listed on the QPL ‘ is optional.
 - When there are multiple product categories in the spec, you need to specify the category.
 - The spec defines each category and its use.
- All QPL products are equal, you cannot specify a specific QPL product, or products, in plans.
 - If you do, you are in the Proprietary Product process.



The QPL Related Items of Interest

- Subject to Periodic Requalification.
- Manufacturers Obligated to Notify DOT of Changes to Product or Address.
- Conditional Approvals May Be Granted During Field Verification Testing, Subject to Full Warranty.
- Traffic Signal Equipment Listed on APL will be merging with the QPL over the next 2 years.



Inspection/Acceptance of QPL Products on the Job



- STRG
- All QPL products must submit a certification for project acceptance as a minimum
- Additional information is required if it is in the specification



Defective QPL Products



When Is a Product “Defective”??

- When PERFORMANCE does not meet the defined FDOT standard
- Is Performance Failure a Defect of the Product or Because of the Installation??
- Products may be Removed from the QPL for Defects in the Product



Defective Product Investigation



Investigating Product Deficiencies:

- Initiated by *Notification of Alleged Deficiency, Form 630-020-01*

- This process compliments, not replaces, the Construction process



Reporting a Deficiency

Qualified Products List (QPL)

To report problems with a product listed on the QPL, please complete a [Notification of Alleged Deficiency](#).

Specification 415 Reinforcing Steel

[S415 Plastic Chair and Bolster](#)

QPL Number	Other References	Product ID	Manufacturer	Approval Date
S415-0004 Product History	S415	Aztec E-Z Lok Slab Bolster	Dayton Superior (Concrete Accessories) 818 Mill Brook Lane Houston GA 30548 (770) 760-6075	12/3/1997 Last Recert 7/15/2011
Comments and Limitations:	Approved for 2", 2.5" and 3" Approved for Non-Stacking applications only			
S415-0005 Product History	S415	Aztec E-Z Chair	Dayton Superior (Concrete Accessories) 818 Mill Brook Lane Houston GA 30548 (770) 760-6075	12/3/1997 Last Recert 7/15/2011
Comments and Limitations:	Approved for 2.5", 3" and 4.5" Approved for Non-Stacking applications only			
S415-0006 Product History	S415	HD Chair	FTP Accessories Plastics 2305 Lyberty Street Fort Worth TX 76105 (817) 551-3800	7/18/2007 Last Recert 3/25/2011
Comments and Limitations:	Approved for HD200, HD250, HD300, HD350, HD400, HD450, HD500, HD250 Approved for Non-Stacking applications only			
S415-0007 Product History	S415	Slab Bolster	Eagle Eye Products 10442 Liberty Lane Chicago City MN 55613 (203) 915-8601	1/18/2008 Last Recert 2/23/2012
Comments and Limitations:	Approved for 2'00" (60200), 2.25" (60225), 2.50" (60250), 2.75" (60275), 3'00" (60300) Approved for Non-Stacking applications only			



Proprietary Products (and Proprietary Processes)

23 CFR 635.411

Material or Product Selection



635.411

23 CFR Ch. I (4-1-12 Edition)

availability issues or more than one FHWA region may be submitted by the FHWA to the Administrator for action.

(b) A request for waiver and an appeal from a denial of a request must include facts and justification to support the granting of the waiver. The FHWA response to a request or appeal will be in writing and made available to the public upon request. Any request for a technical waiver shall include a copy of such

work of a project and those available materials or products are judged to be of satisfactory quality and equally acceptable on the basis of engineering analysis and the anticipated price for the related portion of work are estimated to be approximately the same, the FHWA for the project shall either contain, or include by reference the specifications for such such material or product that is considered acceptable for incorporation in the work of the

§ 635.411 Material or product selection.

(e) In the case of a design-build project, the following requirements

(d) Reference in specifications and on plans to single trade name materials will not be approved on Federal-aid contracts.

document unless the conditions of paragraph (a) of this section are applicable.

(c) The State transportation department certifies either that such patented or proprietary item is essential for synchronization with existing highway facilities, or that no equally suitable alternate exists, or

(d) 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.

(e) When there is available for purchase more than one nonpatented, nonproprietary material, manufactured or finished article or product that will fulfill the requirements for as then of

paid, directly or indirectly, in payment for any premium or royalty on any patented or proprietary material, specification, or process specifically set forth in the Request for Proposal document unless the conditions of paragraph (a) of this section are applicable.

(f) 49 USC, sec. 57, 1976, as amended at 49 USC, sec. 56, 2003; 49 USC, sec. 56, 2003.

§ 635.413 Guaranty and warranty clauses.

The STB may include warranty provisions in National Highway System (NHS) construction contracts in accordance with the following:



§ 635.411 Material or product selection.

(a) 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

(a)(2) The State transportation department certifies...

unpatented items; or

(2) The State transportation department certifies either that such patented or proprietary item is essential for synchronization with existing highway facilities, or that no equally suitable alternate exists; or

(3) 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.



The State is now responsible for review and Certification that the proprietary product identified in plans is:

1. Essential for synchronization, or
2. There is no equal for the need.

This does not apply to FDOT projects,
FDOT uses the Developmental
Specification process



**BEGIN
WORK
ZONE**

FDOT Approval Process

1. Contracting Agency researches and creates justification documentation then submits the documentation to the FDOT LAP Coordinator or FDOT Project Manager.
2. FDOT receives and coordinates with the appropriate FDOT technical staff to review the basis of the request. As part of this review:
 - a. FDOT may request additional information from contracting agency if necessary,
 - b. Reviewer notifies District designee of evaluation results.
3. District designee completes review and signs Certification, if applicable, or a rejection memo with reason for the rejection.
4. All documentation must be maintained in the Department with project files including all documentation and communication with the contracting agency.

(Note: Typically all this stays in the District, Each District may vary)



Approval or Certification

The written and signed statement by the District designee certifying that a particular patented or proprietary product is either:

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



Certification Requirements

The Certification must include a statement by the District designee that the proprietary product is essential for synchronization with existing facilities; or that no equally suitable alternative, such as:

•*"I (name of District designee), (position title), of the (Name of agency), do hereby certify that in accordance with the requirements of 23 CFR 635.411(a)(2), that this patented or proprietary item is essential for synchronization with existing highway facilities,*

•*"I (name of District designee), (position title), of the (Name of agency), do hereby certify that in accordance with the requirements of 23 CFR 635.411(a)(2), that that no equally suitable alternative exists for this patented or proprietary item.*



Certification Options

•The extent of the Certification (project-specific, multiple projects, region/district-wide, statewide, or programmatic) should be specified.

•When the extent of a Certification extends beyond a single project, a sunset date should also be specified.

Simple Right?



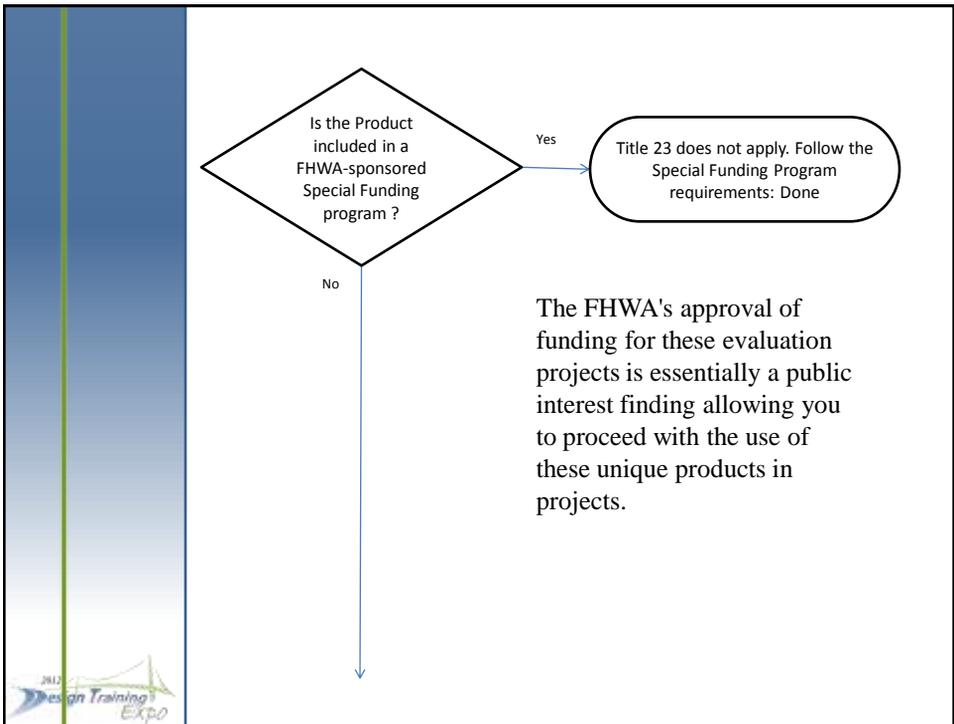
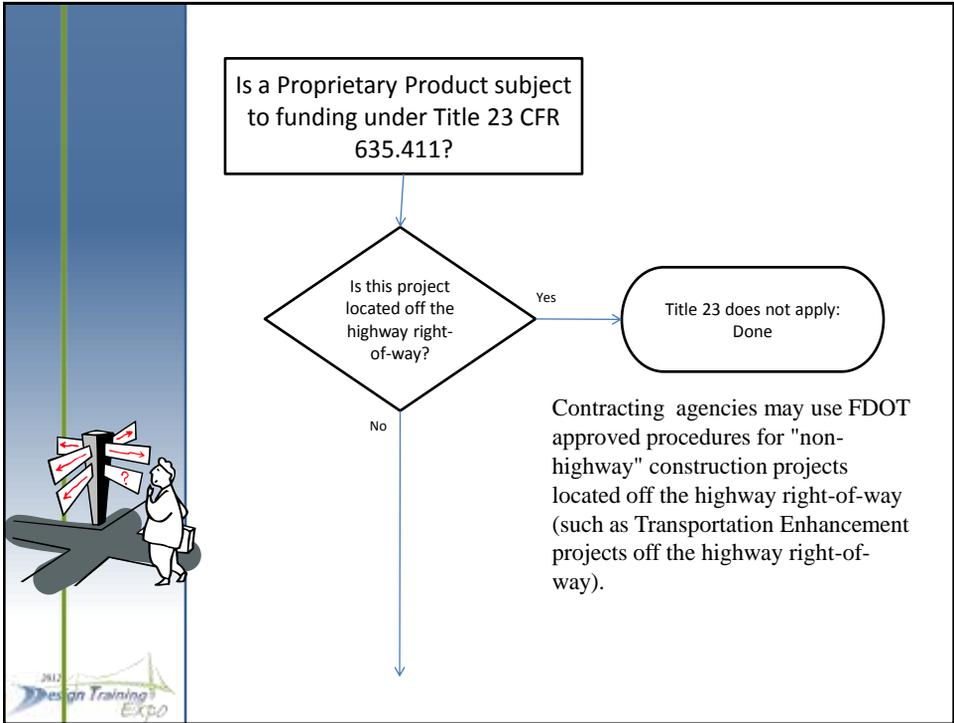
- Do all proprietary products require this process when identified in the plans?
 - No
- What documentation is necessary from the contracting agency?
 - Depends

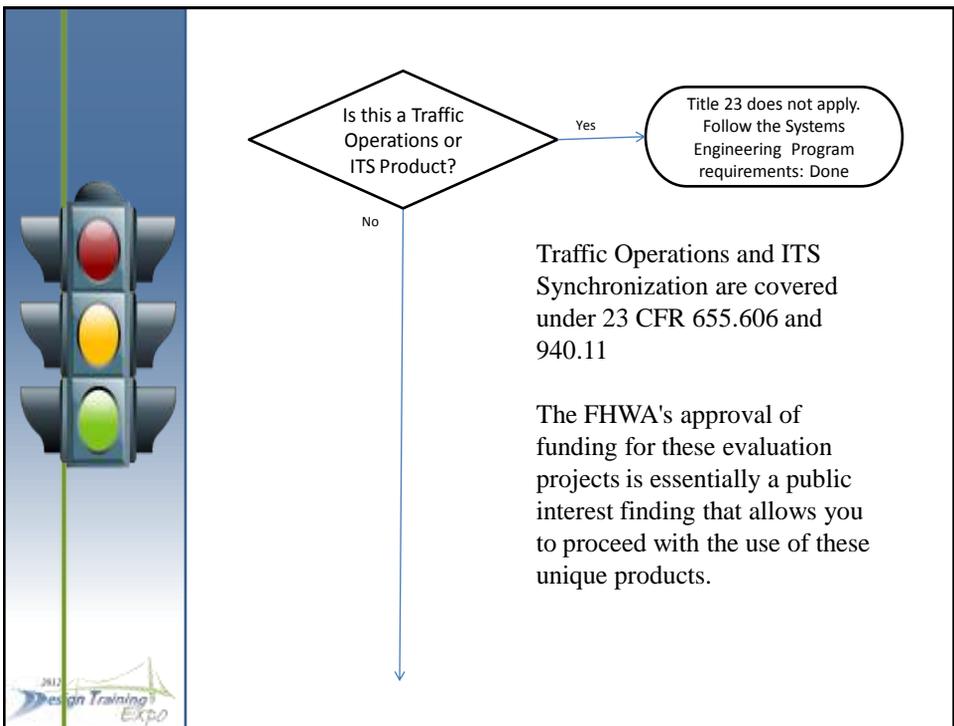
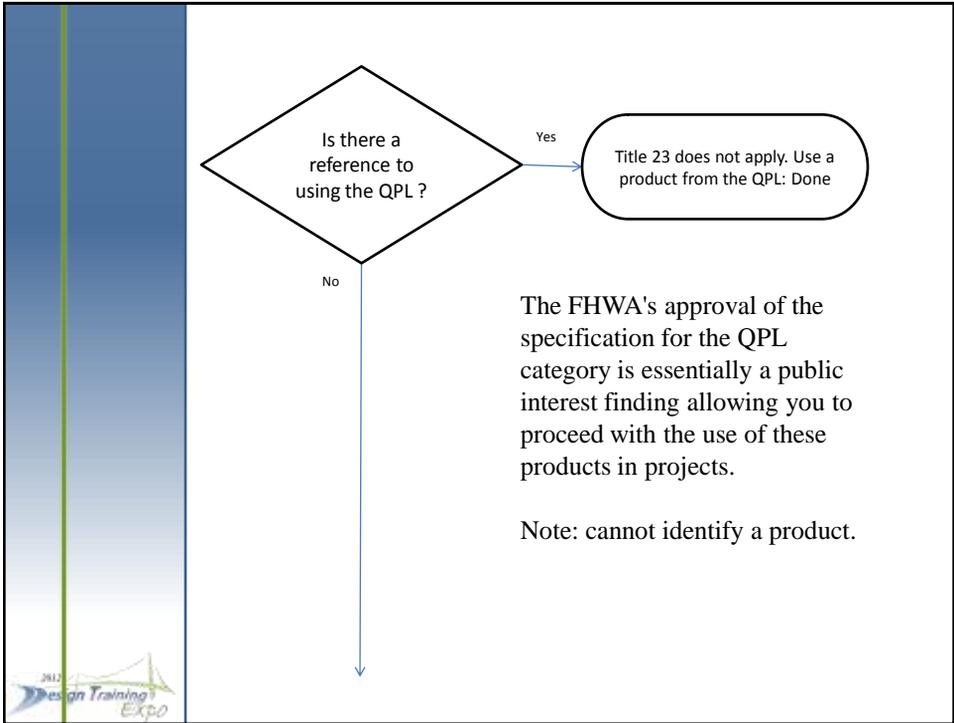
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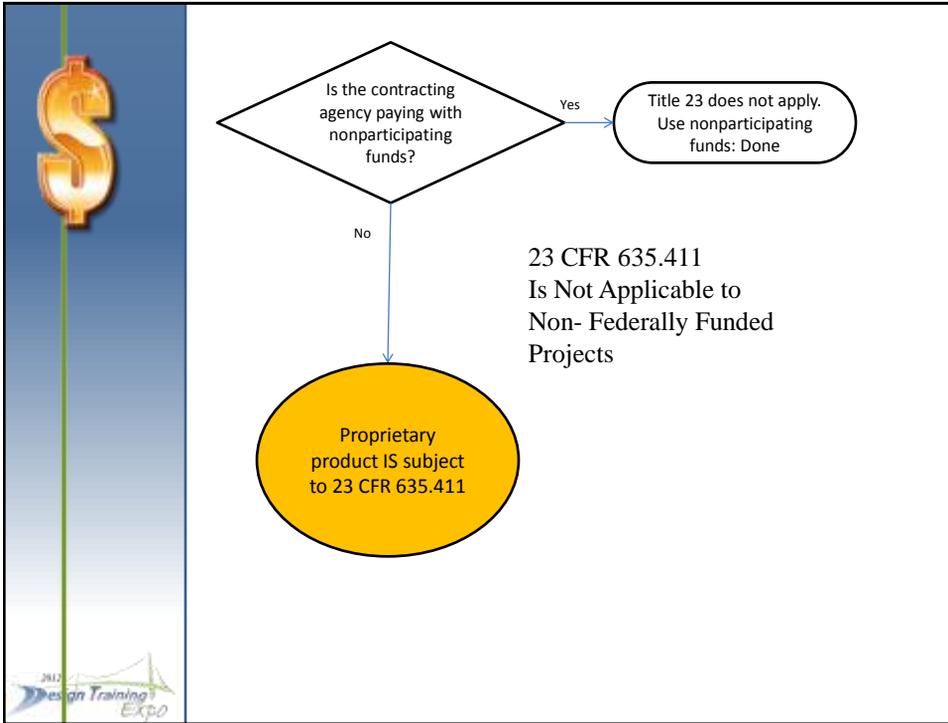
Patented or Proprietary Product:

- A product, specification, or process identified in the plans as a "brand" or trade name (e.g. 3M, Corten).
- However, it may also be a product so narrowly specified that only one or two providers can meet the specification.









What documentation is required to justify a proprietary product to be identified in the plans?





Contracting Agency must provide to FDOT:

- Certification that the proprietary product is necessary for synchronization or there is no equal for the need.
- Documentation to support its certification: including its minimum needs and supporting its contention that the product, or such a performance standard, is necessary and reasonable to achieve these needs.
 - The extent of the analysis should be appropriate for the value and complexity of the products involved.



Can the FDOT require the contracting agency to provide supporting documentation with the certification?

FDOT may require the contracting agency to provide "information as the administrator shall deem desirable" to administer the Federal-aid highway program.



4 reasons a proprietary product or process can be identified in plans:

1. Bids against a non-proprietary product
2. Synchronization
3. Unique or no suitable alternative
4. Experimental



1. Bids against a Nonproprietary product

- Presented as an alternative,
- Equal to the non proprietary product for the bidding process.

2. Synchronization

Contracting Agency must justify based on:

- 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 an agency's maintenance inventory,
- And/or any combination thereof.



Synchronization cont.

In addition, it may be advisable for the contracting agency to evaluate the following factors as they relate to synchronization:

- Lifecycle (the relative age of existing systems that will be expanded and the remaining 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.



FDOT Synchronization

- FDOT uses the Developmental Specification process for our plans.



3. Unique or No Suitable Alternative

Such documentation may include, as appropriate:

- A description of how the proprietary product requirement will benefit the public.
 - The unique needs that are being addressed that result in no equally suitable alternative.
 - Identified safety locations or critical decision points that would justify a higher standard.
- An evaluation of the pool of potential products, and a description of why these products cannot meet the contracting agency's needs.
- An estimate of additional costs, if any, incurred as a result of this proprietary product requirement.



Unique cont...

- FDOT uses the Developmental Specification process for our plans.



When is a PIF necessary?

A certification and a PIF are different in that:

- 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.



4. Experimental Products



- An experimental product work plan must be submitted for review and approval.
 - There are special additional limitations and requirements.
- FDOT projects use the Developmental Spec process



What about using a performance-based specification instead of identifying proprietary products in the plans?



Specifications

- The contracting agency should document the basis supporting its specification certification:
 - including its minimum needs and supporting its contention that such a performance standard is necessary and reasonable to achieve these needs.
- The specification cannot be used to allow proprietary products to be inappropriately or inadvertently required for Federal-aid projects.
 - if the specification reduces the pool products to a single proprietary product, the contracting agency must certify that this is a unique product for which there is no equally suitable alternative
 - The specification must include a 'reasonable' number of products. This is generally 3 or more.
- Do not assume if a national organization (e.g. AASHTO, ASTM) has issued a specification that it is generic:
 - Such specification may be considered proprietary if only one manufacturer can meet the specification requirements.



What about using the 'or equal' clause?

Same as naming a proprietary product or writing a spec.



Summary

- QPL
 - Products are listed by specification number
 - 'Show me the spec.'
 - The QPL must be referenced by the specification in plans.
- Proprietary Products
 - State review and approval is required for synchronization and unique or no suitable alternative.



Contact Information

Karen Byram	Product Evaluation Administrator	Karen.byram@dot.state.fl.us	(850) 414-4353
Paul Gentry	Product Evaluator	Paul.gentry@dot.state.fl.us	(850) 414-4118
Barry Smith	Product Evaluator	Barry.smith@dot.state.fl.us	(850) 414-4776



THANK
YOU

Questions?