



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Rhode Island Department of Transportation
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To: All Consultants

TAC – 0191

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Subject: **Guidance on Patented and Proprietary Product Approval**
TAPE 066 FHWA Rhode Island Division Letter, December 5, 2011, 12-30-2011

RIDOT Project Managers have been advised that patented and proprietary products (sole source) may be incorporated into a RIDOT federally funded project provided that federal approval for the product(s) is requested and received in advance of advertising the project.

“The Federal Highway Administration’s (FHWA) regulations concerning the use of patented and proprietary products are contained in 23 CFR 635.41. Recently, we have revised our guidance to ensure that the implementation of 23 CFR 635.411 does not conflict with FHWA’s goal of promoting innovation. The updated guidance is now posted on the FHWA website at <http://www.fhwa.dot.gov/programadmin/contracts/011106qa.cfm>.”

In summary, the guidance:

- Clarifies that a State DOT may specify proprietary products when the State DOT certifies that there is no suitable alternative product (such as an innovative product offering better performance) or that the product is needed for synchronization.
- Clarifies that FHWA must approve, through a public interest finding, the specification of a proprietary product when other equally suitable alternatives exist.
- Provides for the Internet posting of FHWA’s approval of public interest findings on FHWA’s website and encourages the posting of State DOT certifications on the AASHTO Product Evaluation List website.
- Clarifies that additional approvals are not required when proprietary products are being evaluated in FHWA-sponsored programs such as Highways for Life, the Innovative Bridge Research and Deployment Program, and the Innovative Pavement Research and Deployment Program.
- Continues to support the principle of competition in the selection of materials whenever more than one equally suitable product exists to fulfill project requirements.

Should you have any questions or require clarification regarding this matter, please contact your RIDOT Project Manager.. Thank you for your cooperation with this matter.

Very truly yours,

Robert A. Smith, P.E.
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