

The QPRR will be used as an early warning device to identify non-compliance with LIP objectives and to alert management that special action may be required. The report will be prepared by the BSHP and sent to the PLP Committee, all regions, and division upper management within 15 days following the quarterly PS&E delivery date. The QPRR will be prepared four times a year for state projects, for local projects and combined. For each quarter it will list all of the projects on the LIP for that particular quarter and for which PS&Es arrived by the quarterly delivery date.

The second standard report, the CMLR, will be used to measure progress in achieving the LIP objective on a monthly basis.

The Ad Meeting Minutes will be prepared and distributed by the BPD by the end of the week in which each monthly ad meeting occurs, about six weeks prior to a letting, for the purpose of determining which projects will be advertised for that letting.

## **LIST OF ATTACHMENTS**

<a href="#">Attachment 3.1</a>	Project Letting Process for Fiscal Year "X"
<a href="#">Attachment 3.2</a>	Schedule for Establishing Annual Letting Implementation Plan (LIP)
<a href="#">Attachment 3.3</a>	Sample Letting Restriction List
<a href="#">Attachment 3.4</a>	Quarterly & Cumulative Monthly Goals

## **FDM 19-1-5 Proprietary Products**

December 18, 2015

### **5.1 General**

The following policy applies for all competitively bid State and Local Highway projects independent of State and Local programs and funding sources.

Under 23 USC 112(a), "In all cases where the construction is to be performed by the State transportation department or under its supervision, a request for submission of bids shall be made by advertisement unless some other method is approved by the Secretary. *The Secretary shall require such plans and specifications and such methods of bidding as shall be effective in securing competition.* The FHWA has interpreted this clause to require competition not only for the award of the contract, but to also require competition for the various materials and processes involved in the work.

The specification of a particular product may restrict competition as the pool of available products is reduced to the product selected. In some cases, however, the need for a particular product outweighs the need to procure products competitively. 23 CFR 635.411 provides the regulatory authority for FHWA's participation in the cost of a patented or proprietary product.

A proprietary product is a product, specification, or process identified in the plans or specifications by a "brand" or trade name (e.g. 3M, General Electric). However, it may also be a product so narrowly specified that only a single provider could meet the specification.

Generic specifications should be written which will obtain the desired results and at the same time assure full opportunity for competition among equivalent materials, equipment, and methods. The use of a specification issued by a national organization (i.e. AASTHO, ASTM) does not ensure that the specification is generic in nature. A specification is proprietary if only one manufacturer can meet the specification requirements.

Federal regulations allow the use of proprietary products on a Project-by-Project, Major-Mega Project Corridor or a Statewide basis under the following conditions:

1. No Approval needed for the Use of Proprietary Products when either applies.
  - a. Only proprietary products are acceptable and two or more proprietary products from multiple manufacturers are offered as alternatives. Specifications must include as many acceptable products as possible and shall include the words "or equal" to ensure the broadest range of choice [23 CFR 635.411(a (1))].
  - b. Products which have been approved under special funding/evaluation programs do not need additional certifications or approvals under 23 CFR 635.411 for the use of patented or proprietary products. The FHWA's approval of funding for these evaluation projects is essentially a finding that it is in the public interest to proceed with the evaluation of these unique products. However, additional use of these products on other Title 23-funded projects that are not funded under these special funding/evaluation programs must comply with 23 CFR 635.411. Examples of FHWA-sponsored programs include Highways for Life, the

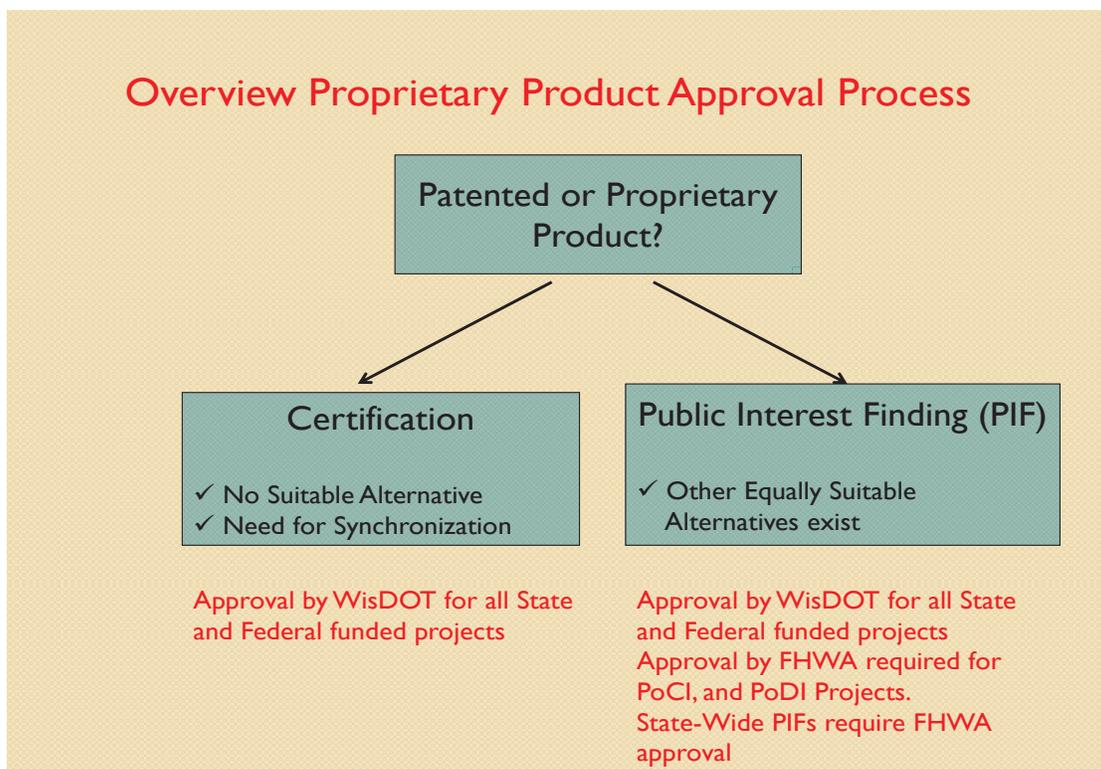
Innovative Bridge and Pavement Research and Deployment Program [23 CFR 635.411 (3)].

2. Approval required for the Use of Proprietary Products when any case applies:

- a. Products are necessary for and meet the definition for synchronization with existing facilities. A department prepared certification is required [23 CFR 635.411(a) (2)]. Refer to [DT1584](#) and [Attachment 5.1](#).
- b. Products for which no suitable alternative exists (single source). A department prepared certification is required [23 CFR 635.411(a) (2)]. Refer to [DT1584](#) and [Attachment 5.1](#).
- c. Products where other alternatives exist provided the product is approved by a Public Interest Finding (PIF) [23 CFR 635.411(c)]. Refer to [Attachment 5.2](#).
- d. Products are being evaluated through a formal research project or an experimental work plan approved by the department and FHWA. WisDOT can request FHWA's approval for use of proprietary products as part as a formal research (experimental) study. This process requires the departments to provide FHWA with a product work plan. Work plans are to be reviewed and approved by the new products engineer within the DTSD BTS material management section and then forwarded to the FHWA's field operations engineer (FOE) or Major Projects Engineer, as appropriate, for final approval.

Note: Use of proprietary products that are 100% locally funded and competitively bid with a State/Federally funded project require an approval process. Use of Proprietary Products shall be in accordance with Buy America Provisions.

The majority of Proprietary Product Approvals will follow the Certification process or the PIF process shown in Figure 5.1.



**Figure 5.1 Overview Proprietary Product Approval Process**

**5.2 Proprietary Product Certification Process [23 CFR 635.411 (a)(2)]**

The department provides a written and signed statement certifying that a patented or proprietary product is either:

- a unique product for which there is no equally suitable alternatives or "single source", or
- necessary for synchronization with existing facilities.

### 5.2.1 Unique Product or Single Source Certification

A unique product for which no equally suitable alternative(s) or "single source" means that after a product search, only one product is determined to be reasonably available for the required product, process, or construction item. Specifying "no suitable alternative" is documenting that only one product can perform a desired function or satisfy a need.

A certification for no suitable alternative (single source) shall be prepared explaining the search and why no alternatives can provide the function and needs for project. Use [DT1584](#) Certification of Patented or Proprietary Product for the certification process.

Here is a project example where a single source process may apply. A historic bridge is in need of specialty rehabilitation work. The project design team, after a search determines that there is only one supplier that can provide the replacement parts and still meet design requirements.

### 5.2.2 Synchronization Product Certification

Synchronization is providing a product that matches current or desired characteristics of a project's existing facility or inventory. Synchronization may be based on:

1. Function - The proprietary product is necessary for the satisfactory operation of the existing facility. An example of function would be replacing or addition to street signal controllers. Only one brand is compatible to the Municipality's existing system. Provide a statement from the Municipality justifying the proprietary controllers.
2. Aesthetics - The proprietary product is necessary to match the visual appearance of existing facilities. An example of aesthetics would be selected Community Sensitive Solution (CSS) products. Provide documentation describing the CSS process that supports the use of aesthetics products.
3. Logistics - The proprietary product is interchangeable with products in an agency's maintenance inventory. An example of logistics would be specifying a specific anchoring system for high tension cable barrier for which the maintaining agency only stock piles the proprietary product. Provide a statement from the maintaining agency.

A certification for synchronization shall be prepared documenting the appropriate characteristics of synchronization. Use [DT1584](#) Certification of Patented or Proprietary Product for the certification process.

### 5.3 Public Interest Finding (PIF) Process [23 CFR 635.411 ( c )]

The department provides documentation that it is in the public's best interest and requests approval to use a proprietary product even though other equally acceptable products are available. The level of documentation is dependent on the project needs and reasonableness of the product meeting the needs.

There is no specific format for a PIF. However, at a minimum the following factors shall be included:

- A description of the product and how the proprietary product will benefit the public. Define the specific needs of the project and how the proprietary product best accomplishes meeting those needs.
- An evaluation of other equally acceptable products. Describe any limitations and conditions these products may have in NOT meeting project's needs. Critical factors may include time to construct, availability, complexity to construct, impact to road users, safety issues.
- An estimate cost analysis. This should include an estimate cost of the proposed product and an estimate that includes competitive bidding.
- Engineering and economic analysis to support the proprietary product. This may include product specifications/properties/performance/innovation that is consistent with the project needs. Compatibility or improved integration with other project items can support the use of the product. Document any advantages for production availability and distribution.
- The duration and extent of the approval. Most proprietary product PIF's are project specific. However major or mega corridor type projects may want to consider a Corridor Type PIF. Corridor PIF's shall specify the Project(s) and the duration. State-Wide PIFs shall specify the sunset date with a maximum window of five years.

### 5.4 Certification and PIF Approval Process for Region/Local and Major/Mega Corridor Projects

For region managed projects:

1. Region PDS prepares the certification or PIF, obtains signature of the region project development chief, and forwards to the project oversight engineer within the DTSD BPD project services section for approval.
2. Project oversight engineer reviews/approves certifications and PIFs for all state or federally funded

projects.

3. FHWA will need to review and approve all PIFs for projects designated as PoCI and PoDI.
5. The project oversight engineer will forward PIF approval requests to the FHWA field operations engineer (FOE) or Major Project Engineer, as appropriate.

For local program projects:

1. The design consultant prepares the certification or PIF and submits to the management consultant for the region.
2. The management consultant will review the certification or PIF for completeness but not for approval. The management consultant will forward satisfactory certifications and PIFs to the region local project manager for signature, who will forward to the DTSD BPD project services section chief for approval.
3. PIFs for local projects designated as PoCI and PoDI require FHWA approval. The BPD project services section chief will forward PIF approval requests to the FHWA field operations engineer.

Proprietary products specified by change order require the completion of the Certification/ PIF approval process outlined above.

#### **5.4.1 Tracking and approved Certifications and PIFs**

A LOG of Approved Proprietary Product Certifications and PIFs will be maintained on the local hard drive (at N:\BPD\Approved Proprietary Product Certifications) and PIFs/Log for Approved Proprietary Product Certifications and PIFs.xlsx. BPD Project Services Section will be the keepers of this log sheet.

The log will be posted quarterly on the State of Wisconsin Department of Transportation web site at:

<http://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/tools/appr-prod/default.aspx>

#### **5.4.2 Statewide Certification and PIF Approval Process**

The appropriate DTSD statewide bureau will develop and approve statewide certifications and PIFs. Coordination with BPD project oversight engineers is recommended prior to final approval. FHWA approval is required for all statewide PIFs.

The Bureau of Technical Services materials management section will update the list as new products are added and old products expire. The approved statewide proprietary product list can be found at:

<http://wisconsindot.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/tools/appr-prod/default.aspx>

FHWA will post Approved Public Interest Findings for PoDI and PoCI projects on FHWA's web site.

### **5.5 References**

Title 23 – Code of Federal Regulations, Part 635, § 635.411:

<http://www.fhwa.dot.gov/construction/cqit/propriet.cfm>

<http://www.fhwa.dot.gov/programadmin/contracts/011106qa.cfm>

<http://www.fhwa.dot.gov/programadmin/contracts/core02.cfm#s2C05b>

Wis. Stat. 16.75 (2)(a)

### **LIST OF ATTACHMENTS**

[Attachment 5.1](#) Example DT1584 Certification of Patented or Proprietary Product

[Attachment 5.2](#) Example Public Interest Finding

### **FDM 19-1-7 Use of Publicly Owned Equipment on Let Contracts**

*February 25, 2011*

Publicly owned equipment should not normally compete with privately owned equipment on a project to be let to contract. There may be exceptional cases, however, in which the use of equipment of the State or local public agency for highway construction purposes may be warranted or justified. Proposed use of publicly owned equipment must be supported by a CEF (see [FDM 3-20-12](#)). For federal oversight projects, the CEF requires FHWA approval.

Where publicly owned equipment is to be made available in connection with construction work to be let to contract, Federal funds may participate in the cost of such work provided the following conditions are met:



**CERTIFICATION OF PATENTED OR PROPRIETARY PRODUCT**

Wisconsin Department of Transportation (WisDOT)

DT1584 7/2015 23 CFR 635.411 (a) (2)

<p>By signature of this document, the State official is certifying that in accordance with the requirements of 23 CFR 635.411 (a) (2), this patented or proprietary item is:</p> <p><input checked="" type="checkbox"/> Essential for synchronization      OR</p> <p><input type="checkbox"/> No equally suitable alternative exists</p>		
Duration	Project Specific Information	
<p><input checked="" type="checkbox"/> Project Specific Certification</p> <p><input type="checkbox"/> Corridor (Major Project) Certification</p> <p>Statewide Certification</p> <p><input type="checkbox"/> (5 yrs maximum for blanket)</p> <p>Specify dates of term:</p> <p>From:</p> <p>To:</p>	<p>Project Title</p> <p>4650-05-71</p> <p>Sheboygan Falls-Taylor Drive; City of Sheboygan</p> <p>STH 28; Sheboygan County</p>	
	<p>Stewardship    <input type="checkbox"/> FHWA    <input checked="" type="checkbox"/> State Administered</p>	
	<p>Product/Material and Name of Manufacturer</p> <p>SIMENS Eagle EPAC Signal Controller, Tapco 5100 West Brown deer Road, Brown Deer WI.</p> <p>Leotek LEDS, Leotek Electronics, San Jose, CA.</p>	
<p>Product Justification</p> <p>Existing city traffic signals are controlled by Eagle EPAC signal controllers. Justification for use of this product is based on compatibility (functionality) with existing signals.</p> <p>The city installs Leotek LED luminaries for their street lighting system. The proprietary product is interchangeable with products in the city's maintenance inventory</p>		
<p>Cost</p> <p>Note to designers: Cost is not a determining factor for synchronization. However a cost evaluation may provide for sound engineering decision making.</p> <p>Eagle EPAC Traffic Signal Controller: \$15000 L.S.</p> <p>Leotek LED luminaries: \$850 each</p>		
<p>Attach Supporting/Reference Documentation (drawing sheet numbers, specifications, correspondence, etc.)</p>		
<p><b>Region Project Development Chief or Local Program Manager: (signature)</b></p>	<p>Name</p>	<p>Date</p>
<p><b>BPD Project Services Chief: (signature)</b></p>	<p>Name</p>	<p>Date</p>
<p>WisDOT Tracking Number WI-0001</p>		

SAMPLE PUBLIC INTEREST FINDING FOR USE OF PROPRIETARY PRODUCTS LETTER  
(a working file of this template: [FDM 19-1-5 A2 doc1](#))

**CORRESPONDENCE** State of Wisconsin Department of Transportation

Date: [Date]

To: [Name], P.E.  
Project Services Chief  
Bureau of Project Development

Attn: [Name], P.E.  
Project Services Engineer for [XX] Region  
Bureau of Project Development

From: [Name], P.E.  
Project Development Chief  
[XX] Region

Subject: **Public Interest Finding for use of Proprietary Products**  
**Design ID # [XXXX-XX-XX]**  
**[Title]**  
**[Limits]**  
**[Highway]**  
**[County]**

This Public Interest Finding (PIF) is requesting approval to furnish portions of the subject project with proprietary items in accordance with FDM 19-1-5 and the United States Code of Federal Regulations 23 CFR 635.411(c).

**Description of the product and how the product meets the project's needs:** Proposed product is Star Track Heavy Duty Railroad Crossing manufactured by Oldcastle Precast, Inc. The existing concrete railroad crossing has experienced several failures resulting in traffic being impacted as well as vehicle damage. The proposal is to replace the crossing. This product will ensure the longevity of the crossing, improved ride comfort and safety.

**Evaluation of other acceptable products:** WisDOTs preferred crossing material at this site is concrete. The existing department standardized concrete crossing has failed and a new crossing is required. There are other pre-fabricated concrete railroad products. Evaluation by the department has concluded that the Star Track HD crossing product meets project needs in terms of costs, time to install, complexity to construct and impacts to the traveling public. Important to note is E&LS railroad has experience maintaining this crossing product.

**Cost Analysis and engineering analysis support.** Estimated cost for installation of the Star Track HD crossing is \$400,000. This includes removing and installing the railroad crossing, the roadway approach work, and the traffic control with a detour. The estimate a standard concrete surface railroad crossing is \$320,000 including the same work noted above. Engineering analysis determined a 30 year life for the Star Track crossing and a 10 year life for the standard concrete crossing. Routine maintenance by the railroad is anticipated for both crossing types. Assuming a 30 year life-cycle the standard concrete crossing would be replaced two times for a total estimate of \$960,000 in current dollars. Assuming today's value of money the Star Track HD Crossing will be less expensive than a concrete crossing over 30 year life span.

Not included in the life-cycle costs are impacts to road users. The Star Track HD crossing can be installed and open to traffic the same day. This results in significant savings by reducing travel delay to the traveling public.

**Duration of the Product approval.** This is a project specific proprietary product request. The sunset date is the completion of the project.

Your concurrence with this Public Interest Finding for use of proprietary products on Project XXXX-XX-XX is requested.

\_\_\_\_\_  
Region Project Development Chief (or Local Program  
Manager)

\_\_\_\_\_  
Date

**Concur:**

\_\_\_\_\_  
BPD Project Services Chief (or Local Project Delivery  
Chief)

\_\_\_\_\_  
Date

\_\_\_\_\_  
FHWA Field Operations Engineer  
(Federal Stewardship Projects Only)

\_\_\_\_\_  
Date