TO: JESSE DEVLIN, P.E., HIGHWAY SAFETY & DESIGN PROGRAM MANAGER
FROM: MATTHEW BOGACZYK, TRAFFIC DESIGN ENGINEER
DATE: NOVEMBER 4, 2015
SUBJECT: MANCHESTER-RUTLAND TOWN NH SURF(50) VERMONT DETERMINATION OF PUBLIC INTEREST FINDING (VTPIF) ECONOLITE PRODUCTS – U.S. ROUTE 7

Project Location:
Beginning in the Town of Manchester on US Route 7 at MM 4.630 and extending Northerly along US Route 7 for a distance of 24,472.80 feet (4.635 miles) and stopping at MM 1.745 in the Town of Dorset. Resuming in the Town of Wallingford at MM 0.000 and extending Northerly 73,534.56 feet (13.927 miles) and ending at MM 1.177 in Rutland Town.

Project Description:
Work to be performed under this project includes surface preparation involving patching, pot hole repair, crack sealing, overlaying with a thin bituminous surface treatment, traffic signal upgrades, traffic markings, rail crossing upgrades, and other related highway items.

Category B Determination:
As part of this project, Traffic Design would like to replace the existing traffic signal controllers at various intersections within the project limits. The project area contains some intersections that are very busy, with some intersections' traffic volumes exceeding 13,000 ADT, including one that exceeds 20,000 ADT. We believe upgrading the traffic signal equipment will greatly improve the operation and efficiency of these intersections.

Typically on paving projects, we only upgrade the intersection vehicle loop detection equipment with new vehicle detection, but at these particular locations, the traffic signal controllers are no longer supported by the manufacturer and we feel it is in the best interest of the agency to upgrade it at this time.

We have specified that the existing Econolite equipment be replaced with new Econolite products because the intersections are part of a coordinated system with other traffic signal controllers on U.S. Route 7. The Traffic Shop has also expressed a need to maintain the Econolite brand at this location to simplify operation and maintenance.

It should be noted that traffic signal controllers that are outside of the coordinated system will be competitively bid.

The estimated cost of the new traffic controllers is $8,370.00.

MEB: meb
PDD Procedure (PDDP) #3

Subject: Practices for Determining and Maintaining Integrity of Public Interest Findings Related to Materials Procurement. Use of Proprietary Products - Vermont Determination of Public Interest Finding (VDPIF)

Date: November 4, 2015

Background
As a part of our role in supporting stewardship of federal funds, the state is responsible for compliance with applicable rules for expenditures. Under federal rule (23 CFR 635.411), federal funds shall not participate directly or indirectly in the payment for any royalty or premium for any patented or proprietary material used in a federally-aided project or contract. Since many VTrans’ projects are federally-aided, it is necessary to preclude the use of direct specification or effective specification limiting construction materials to a proprietary or patented item, unless a compelling public interest is fulfilled.

All federally aided projects must conform to the requirements regarding proprietary or patented items. Determinations within full FHWA oversight projects must be completed or approved by the FHWA Division office. Determinations within “Delegated projects are within the purview of the Agency. This document identifies the factors and conditions to be used for a Vermont Determination of Public Interest Finding (VDPIF) on all federally-aided projects.

Proprietary or patented items listed in a permit condition for the project are not causes for a public interest finding or PIF. Consideration of the availability of or need for a PIF should occur at the time of permitting.

The information necessary to make a determination for a PIF, the processing of the request, tracking of the use of the PIF, and annual reporting requirements are described in this PDDP to assure consistency, adequacy of review and summarize areas for enhancement of competition.

The Agency intends to provide a process for defining PIFs at the state level which will enable stewardship activities to be completed at the state level on both full FHWA oversight and on projects where oversight has been delegated to the Agency.

The guidance available from federal sources was considered carefully with attention to establishing a common standard for the Agency’s use. The applicable FHWA rule elements are excerpted and reprinted here for clarity.

23CFR Part 635.411
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 forth in the plans and specifications for a project, unless:
   (1) Such patented or proprietary item is purchased or obtained through competitive bidding with equally suitable 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.

(b) When there is available for purchase more than one nonpatented, nonproprietary material, semifinished or finished article or product that will fulfill the requirements for an item of work of a project and these available materials or products are judged to be of satisfactory quality and equally acceptable on the basis of engineering analysis and the anticipated prices for the related item(s) of work are estimated to be approximately the same, the PS&E for the project shall either contain or include by reference the specifications for each such material or product that is considered acceptable for incorporation in the work. If the State transportation department wishes to substitute some other acceptable material or product for the material or product designated by the successful bidder or bid as the lowest alternate, and such substitution results in an increase in costs, there will not be Federal-aid participation in any increase in costs.

(c) A State transportation department may require a specific material or product when there are other acceptable materials and products, when such specific choice is approved by the Division Administrator as being in the public interest. When the Division Administrator's approval is not obtained, the item will be nonparticipating unless bidding procedures are used that establish the unit price of each acceptable alternative. In this case Federal-aid participation will be based on the lowest price so established.

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

The clear goal of the regulation is the furterance of competition in procurement. There is, however, recognition that factors other than price alone are legitimate criteria for material/product selection in a few instances. A Public Interest Finding must be based on the criteria established in the guidance and should be supplemented by additional information that supports the finding, if that information is available.

Supplemental FHWA guidance is contained in Attachments B and C to this PDDP.

**Procedure:**

The federal guidance-supplied factors and Vermont criteria for determination are in the following:

**Categories:**

A) ONLY a single item exists that can fulfill the project technical requirements

B) There is a need for synchronization with existing items or systems which requires a specific manufacturer's product.

C) A single item, or product, is being evaluated as part of an approved research project or experimental effort.
D) In limited instances a Public interest Finding may be made on the basis of Cost Effectiveness. This should be used in only rare situations.

Facts which support at least one of the criteria listed above are the sole basis for initiating a VDPIF. A VDPIF will be limited to a project specific approval, unless the facts and criteria are valid for municipal, regional or statewide systems that require integration. The review will require a certification of accuracy for the findings submitted, including the support materials.

The procedure to identify compliance with one of the four categories is initiated by a project manager at the request of an Agency representative, a project designer, project owner, or consultant. An owner may be a municipality, district, association or other body, recognized by agreement with the Agency. If the facts supporting consideration are documented, a Project Designer proposes a VDPIF to the Project Manager. If the proposal is supported by the Project Manager, then the proposal will be forwarded to the Program Manager for authorization. If the circumstances supporting the VDPIF are of a state-wide or programmatic breadth, the Program Manager will supply notice of the proposed decision to each affected program (or Agency Division or Section) for their comment. The Program Manager may convene a review panel at his/her discretion for assistance in formulating a decision. The decision of the Program Manager is considered to be a final decision rendered on behalf of the State.

Determinations on full FHWA oversight projects and State wide VDPIF must be approved by the FHWA Division office before PS&E can be approved for the respective project(s).

It should be noted that a VDPIF is not required if the material is on the Approved Products List and all appropriate items in the group (i.e. without the exclusion of any on the list for the particular bid item) are specified. Each project which is completed using materials authorized under this procedure shall have a VDPIF specific to the use of the material or product.

It should also be recognized that if a patented or proprietary product(s) is specified in a project as an alternate to a non-patented/non-proprietary product, a VDPIF is not required. If one or more patented or proprietary products is specified in a project without a non-patented/non-proprietary product, a VDPIF will be needed, regardless of the number of patented or proprietary products specified.

Further, seeking a VDPIF does not relieve the Agency from compliance with the federal “Buy America” requirements.

Failure to follow this procedure could result in the denial of federal-aid participation in the cost of the item that uses the patented or proprietary product.

Copies of all approved determinations, whether full oversight or delegated, will be supplied to the project Owner, Project Manager (for inclusion in the project file), Contract Administration Section, and Materials& Research Section. The VDPIF will include the items listed below.

In accordance with the latest Stewardship and Oversight Agreement that the Agency has with the FHWA, a copy of all approved determinations made on “delegated” and non-delegated projects will also sent to the FHWA Division office. Copies of these Program Manager approved determinations will be sent to the FHWA Division Administrator.

**Required Affirmative Findings for PIF Determination**

To document the propriety of using a patented or proprietary product(s) certain facts will be required. Among them are the project identification number, project location, owner, contracting entity (state,
town, district etc.), affected item, quantity of affected item, category of determination A, B, C, or D), estimated cost of item, and basis of determination as defined for each category below.

For Determinations under **Category A (Only a Single Product Exists)** -

1) In order to determine that only one item can fulfill the project requirements, a clear, documented search must be conducted. The search should include both general investigation and specific inquiry of distributors supplying similar commodities or products. General investigation based on internet search methods should be supplemented by contact with an appropriate Vermont BGS Purchasing Division specialist.

2) The specific function/activity that is fulfilled by the product must be clearly stated in the request. A summary of actions undertaken to achieve the project purpose through alternative methods must be included, and an explanation of the effect of product’s elimination or non-use must be provided also.

3) The estimated cost of the desired product and that of any alternates (if they exist) must be documented.

For Determinations under **Category B (Synchronization)** -

1) Define required qualities for synchronization in specific terms, such as electronic interoperability, substantive contiguous aesthetic continuity, physical compatibility between interfacing products, permit requirement, etc.

2) Provide documentation confirming the need, such as a letter from a municipality verifying the synchronicity and any excerpts of plans or advisory panel meeting notes substantiating the request,

3) When synchronization for constructability or maintenance is required request written confirmation from VTrans’ Construction and/or Operations Sections documenting and confirming the necessity.

4) An Estimated cost of the proposed product with estimated costs of alternates (if they exist).

5) Note that determinations under this category may be made on individual project or limited duration categorical bases. The basis for a determination and the effective duration of the determination under this category must be stated. If categorical, the sunset period may not be longer than five years.

For Determinations under **Category C (Research or Experimental Effort)** -

1) Documentation that the proposed product, evaluation criteria and term of evaluation have been specified in an “Experimental” or “Category II” workplan approved by the FHWA.

2) The product proposed for use provides a reasonable likelihood of improving the performance level, promoting competition among functional equivalents, reducing life cycle costs, or reducing the impacts on the traveling public during the construction phase work.

3) Verification that mitigation of specific conditions warrant the examination of an alternate product, methods, or equipment with no increased costs.
For Determinations under **Category D (Cost Effectiveness)** -

1) A clear, definitive statement as to what benefit the proprietary product will bring to the project.

2) A detailed cost estimate for the proprietary product(s) and the non-proprietary product(s) that clearly show a substantive cost effectiveness.

**Tracking the Use of VDPIFs**

The Agency must track the use of Vermont Determinations of Public Interest Finding(s) and their application to federal aid projects in Vermont. The primary records will reside in the Materials and Research (M&R) Section. The M&R Section will compile an annual report summarizing the Agency’s specified use of patented or proprietary products and invocation of PIFs. The differing types of PIF necessitate notice from Project Managers for the use of a categorical PIF, e.g., integrated traffic control systems. The categorical PIF may be deployed across the state or regionally. Each time that the PIF is used, it will be listed in the annual report. Such categorical PIFs will have a sunset date not to exceed five (5) years from date of approval.

The annual report will provide a compilation of actions, may provide for review of findings so that PIFs set to expire may be considered for renewal, or to ensure that any changes in condition that invalidate the PIF are addressed. The annual report will be prepared in February based on data from the preceding calendar year and will be transmitted to the Director of Program Development.

Since FHWA will be receiving all PIF’s from the respective Project Managers, there will be no need for submission of the annual report to FHWA.

*The data format for PIF and format for the final document approving the PIF are attached as ATTACHMENT A.*

**Exceptions:**

This procedure does not apply to materials identified on the Agency’s APL.

**Approved:**

_________________________     July 31, 2009

Richard Tetreault, PDD Director
Vermont Agency of Transportation
Public Interest Finding Related to Materials Procurement for a Project

The federal regulation detailed in 23CFR Part 635.411 provides specific conditions under which a proprietary item, or reduced competition may be authorized. This form contains attachments that document the necessary facts, conditions and citation to authorize a Public Interest Finding.

This project, Manchester-Rutland Town NH SURF(50), located along U.S. Route 7 from the Town of Manchester to the Town of Rutland, is intended to provide for safe and efficient transportation. In the course of the project development, the designers have specified Econolite ASC3-2100 (NEMA TS2) Traffic Signal Controller to fulfill a requirement for synchronization with the existing traffic signal coordinated system to complete the project and meet the project’s intention. Documentation supporting this “Finding” is attached.

Despite responsible efforts to identify the most competitive material to perform this function, the Agency through its Project and Program Managers has found that (check appropriate box):

☐ there is only one item available that can fulfill the necessary function required for the project (Category A); or

☒ the proprietary product is necessary for synchronization with other adjacent resources or existing facilities (Category B); or

☐ the proprietary product has been incorporated for research or experimental evaluation in relatively short sections of road (Category C); or

☐ the proprietary product is shown to be cost effective (Category D).

Or

☐ the material being specified was approved on a prior VDPIF. That VDPIF is valid for this project as it is for municipal, regional or statewide systems that require integration or synchronization. It was approved on (fill in date) and has a sunset date of (fill in date).

These findings have been made in accordance with Agency practices, including documentation of the underlying facts compelling the Public Interest Finding.

Recommended by: Michael Jader   Project Manager   Date: 11/5/15
Approved by: (signature)   Program Manager   Date: 11/5/15

FHWA’s approval required: ☐ Yes   ☒ No

FHWA   (signature, if FHWA approval is required)   Date:

cc: FHWA Division Administrator
    Director Program Development
    VTrans M&R Division
    Contract Administration Section