

TRANSPORTATION POLICIES AND PROCEDURES

SUP 01-1 Proprietary Items

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PURPOSE

This policy outlines the roles and responsibilities pertaining to the use and acquisition of proprietary items on Arizona Department of Transportation (ADOT) construction projects exempt from the procurement code. Although the policy has remained basically the same throughout the years, roles and responsibilities have shifted from one version to the next. This policy applies to both Federal-aid Highway Program projects and non-federal-aid projects.

BACKGROUND

There are numerous highway construction items that are state-of-the-art and unique that can bring overall cost or safety benefits to ADOT projects. In recognition of this, ADOT has published guidelines on how and when these items may be incorporated into plans and specifications. The subject of proprietary items is addressed in ADOT's Standard Specifications, Section 106.

DEFINITIONS

Certification	A signed statement from the Group Manager of responsible charge certifying that a particular proprietary item is either: <ul style="list-style-type: none">• Necessary for synchronization with existing facilities; or• A unique product for which there is no equally suitable alternative.
Experimental Product	A proprietary item used for research or for a distinctive type of construction, used experimentally on relatively short sections of road.
Proprietary Item	A product, specification or process identified in project plans or specifications (also referred to as a patented or proprietary product) as a "brand" or trade name. It may also be a product so narrowly specified that only a single provider can meet the specification.

Public Interest Finding (PIF) An approval based on a request from a contracting agency stating that it is in the public interest to allow the contracting agency to require the use of a specific material or product **even though other equally acceptable materials or products are available.**

Synchronization Providing a product that matches specific current or desired characteristics of existing facilities. Synchronization may be based on any combination of:

- **Function:** The proprietary item is necessary for the satisfactory operation of existing facilities.
- **Aesthetics:** The proprietary item is necessary to match the visual appearance of existing facilities.
- **Logistics:** The proprietary item is interchangeable with products in an agency's maintenance inventory.

In addition, the following factors should be considered in determining the need for synchronization:

- **Life cycle:** 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 and extent** of products and systems to be synchronized with and the relative cost of the proprietary elements compared with the cost of replacing the existing elements requiring synchronization.

POLICY

A. ADOT projects exempt from the procurement code may allow for the use of proprietary items in construction projects when:

1. The item is purchased or obtained through competitive bidding with equally suitable unpatented items;
2. ADOT certifies the item is either essential for synchronization with existing facilities or that no equally suitable alternate exists;
3. A determination is made that it is in the public interest to require the use of the item even though other equally acceptable materials or products are available; or
4. The item is used for research or for a distinctive type of construction, used experimentally on relatively short sections of road.

B. ADOT shall ensure that all materials and processes used are cost-effective and consistent with the requirement for the broadest practical competition.

- If the plans or specifications list proprietary items, they must list all or three or more products and the words “or equal” to allow the contractor to choose from as many acceptable products and technologies as possible.
- C. References to Proprietary items may be listed in Special Provisions when the items have been pre-approved for use by ADOT and are listed on the Approved Product List (APL), provided that the items comply with one of the provisions of Subpart A above and ADOT Standard Specifications 106, as well as being accompanied by drawings and specifications if necessary.
- D. Pre-approved plans and/or specifications for frequently used products and processes shall be developed and kept on file for use on applicable projects. It is unacceptable to create pre-approved plans or specifications that are duplications of proprietary specifications, as this could exclude competing products or processes.

PROCEDURES

- A. Certification of a Proprietary Item—ADOT may certify that a particular proprietary item is either necessary for synchronization with existing facilities or is a unique product for which there is no equally suitable alternative. ADOT is also responsible for all product certifications on local public agency (LPA) projects, including certified acceptance LPA projects.
1. The Project Manager shall provide documentation to be approved by the Group Manager of responsible charge, justifying the use of only one product or patented process. The documentation shall include a description of the proprietary item's:
 - Uniqueness that results in no equally suitable alternative
 - Essentiality
 - Estimate of additional cost incurred if any
 - Synchronization with existing highway facilities (lifecycle evaluation as needed)
 - Maintenance requirements
 - Availability
 - Impacts on safety
 - Potential benefit to the Department and Public
 2. This justification document shall be submitted for approval prior to inclusion of the products or processes in the plans or specifications. This should be accomplished as early in the design process as possible to avoid any adverse impact or schedule delay.

3. The Group Manager of responsible charge will provide approval in the form of a signed statement certifying that a particular proprietary item is either necessary for synchronization with existing facilities or is a unique product for which there is no equally suitable alternative.
 4. Copies of the approval shall be forwarded to the Contracts and Specifications Section and any affected services or consultants and a copy shall be placed in the project file.
 5. ADOT approved certifications shall be tracked by the Group Manager of responsible charge and reported quarterly to apl@azdot.gov.
 6. Blanket Certification—A Blanket Certification is required when the need for a proprietary item meeting the criteria for a certification is anticipated to extend beyond a single project (ex. multiple projects, district/region wide, statewide, programmatic). In order to assess changes in market conditions and reexamine the need to specify a proprietary item, a Blanket Certification should include a sunset provision of 2-5 years as appropriate. A Blanket Certification is signed by the ADOT Group Manager of responsible charge and a copy is provided to the FHWA, Arizona Division Design Program Coordinator via letter (Cc apl@azdot.gov) for all Federal-aid Highway Program Projects.
- B. Proprietary Item PIF—A PIF letter is required when the contracting agency requests to use a specific material or product **even though other equally acceptable materials or products are available**.
1. Project Specific PIF - A Project Specific PIF is signed by the ADOT Group Manager of responsible charge and a copy is provided to the FHWA, Arizona Division Design Program Coordinator via letter (Cc apl@azdot.gov) for all Federal-aid Highway Program Projects.
 2. Blanket PIF - A Blanket PIF is required when the need for a proprietary item meeting the criteria for a PIF is anticipated to extend beyond a single project (ex. multiple projects, district/regionwide, statewide, programmatic). In order to assess changes in market conditions and reexamine the need to specify a proprietary item, a Blanket PIF should include a sunset provision of 2-5 years as appropriate. A Blanket PIF is signed by the ADOT Group Manager of responsible charge and a copy is provided to the FHWA, Arizona Division Design Program Coordinator via letter (Cc apl@azdot.gov) for all Federal-aid Highway Program Projects.
 3. Department Furnished Material – Department Furnished Material (DFM) is material owned, furnished or designated by ADOT or the LPA. The FHWA, Arizona Division receives copies of all requests for DFM PIFs on Projects of Division Interest (PODI) projects Guidance on specific categories is as follows:
 - Manufactured Materials—PIF is required to specify ADOT or LPA furnished manufactured materials. The PIF should include the procurement number or otherwise demonstrate that the material was acquired competitively. Once approved, use of the manufactured material must be made mandatory.

- Local Natural Materials and Disposal Sites—ADOT or LPA designated local natural materials or disposal sites can be included in the contract as optional. These materials may be designated for either optional or mandatory use, however mandatory use will require a PIF.
4. All PIF requests must include documentation of a compelling justification of the reasonableness of ADOT or LPA minimal needs and the best method to meet these needs consistent with the requirement for the broadest practical competition.

The level of documentation included depends on the nature of the product and projects involved. Supporting material may include:

- A description of how the proprietary item will benefit the public.
 - An evaluation of the pool of other equally acceptable products.
 - An estimate of additional costs incurred.
 - Description of need including limitation and conditions (types of roadways, traffic volumes).
 - Engineering/economic analysis.
 - Product availability and compatibility, logistical concerns and other unique considerations.
5. **Approval to specify a proprietary item is needed at project authorization. Staff is encouraged to submit requests for approval early in project development to avoid potential delays in authorization.**
6. If a PIF is denied, then the item must be competitively bid or designated as non-participating.
- C. **Experimental Products—An Experimental Feature is a material, process, method, equipment item, traffic operational device or other feature that:**
- Has not been sufficiently tested under actual service conditions to merit acceptance without reservation in normal highway construction, or
 - Has been accepted but needs to be compared with alternative acceptable features for determining their relative merits and cost effectiveness.

ADOT may decide to use a proprietary product or feature for research or for a distinctive type of construction, used experimentally on a relatively short section of road. Documentation and a follow-up evaluation are required.

- D. Federal-aid funds cannot participate in any cost which isn't incurred in conformity with state law. Therefore, proprietary references not supported by the appropriate proprietary products documentation will be non-participating. Documentation (Certifications, PIFs, etc.) should be maintained in the project file if requested.

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11/1/2023

Date