

### **17-1.05 Proprietary Material [Rev. Aug. 2011, Apr. 2016]**

A proprietary material is defined through specifications that are so specific that only one product will satisfy the requirements, or that the name of the product is actually specified. To ensure competitive bidding, the designer should restrict the use of proprietary materials on a project. However, if a situation occurs where the use of a proprietary material will enhance safety, control costs, or will otherwise improve the project design, the use of a proprietary material may be justifiable.

#### **17-1.05(01) Justification**

The designer must submit for approval one of the following certification or a public-interest finding requests for the use of a proprietary material. This should occur at Stage 2, but not later than Stage 3. Editable versions of the forms appear on the Department's website at [www.in.gov/dot/div/contracts/design/dmforms/](http://www.in.gov/dot/div/contracts/design/dmforms/), under Proprietary Materials.

1. Certification for No Suitable Existing Equal Material. If no suitable equal material exists, a Certification should be prepared. Figure 17-1C should be used for this request.
2. Certification for Product Essential for Synchronization. A proprietary material may be justified where it is essential for synchronization with an existing highway facility, for which there is no equally-suitable alternative. Figure 17-1D should be used for this request.
3. Experimental. A proprietary material may be justified for research purposes or for a distinctive type of roadway. A justification for an experimental or research item should include a work plan which details the evaluation to be conducted. For such a material to be used on the State highway system, the procedure described in the *INDOT Guidelines for Initiating and Reporting Experimental Features Studies* should be followed. Figure 17-1C should be used for this request.
4. Public-Interest Finding for Proprietary-Material Use. The designer should prepare a Public-Interest Finding (PIF) for the use of a material if suitable alternatives exist but are not the most cost-effective or in the public's best interest. This should include a description of the circumstance being addressed due to use of the proprietary material, alternative solutions that were considered, and the reasoning why the proprietary material was chosen. Figure 17-1E should be used for this request.

5. Programmatic Approval. A PIF is required for a product approved on a program-wide basis if there are other suitable alternatives. A Programmatic Certification is required if no suitable alternatives exist. Figure 17-1F should be used for this request. The justification should include a work plan which details the evaluation to be conducted. A PIF or Programmatic Certification should include the length of time that the approval will be in effect. A Programmatic approval should be periodically reviewed to assess changes in the market conditions that can make them obsolete. If a pre-approved list has fewer than three vendors, a proprietary-product approval is required before that list can be used. The current Programmatic Proprietary Material Approvals list available on the Highway Design & Technical Support Division webpage, at <http://www.in.gov/indot/2684.htm>.

### **17-1.05(02) Approval Process**

Each request should include Figure 17-1A, the Transmittal Memorandum. The request should be submitted through ERMS to the project manager, who will forward the request to either the Highway Design and Technical Support Division Director or the Bridges Division Director for approval. FHWA approval or concurrence is as follows:

1. INDOT approval is required for each Figure 17-1C request that no suitable equal exists, or each Figure 17-1D request for product essential for synchronization. FHWA concurrence will be required only for a project that requires FHWA oversight.
2. FHWA approval is required for each Figure 17-1C experimental proprietary-material request.
3. FHWA approval is required for each Figure 17-1E PIF request.
4. FHWA approval is required for each Figure 17-1E Programmatic PIF request.
5. FHWA approval is required for each Figure 17-1F Programmatic Certification request.

FHWA approval listed in 2 through 5 above is required without regard to FHWA oversight.

If the project is under construction and a proprietary material is added to the contract, the Certification or PIF should be prepared and approved prior to completion of the change order. If a pay item is changed to proprietary during construction, federal participation is limited to the lower of either the contract unit price or the change-ordered unit price.