

## Specifying Proprietary Items on Federally Funded Projects

If a local agency would like to specify a proprietary item on a federally funded project, the Department needs to approve the use of that item. This includes pay items that are 100 percent funded with local agency money and items in local agency standard details and specifications.

Federal funds can be used for a proprietary product under the following circumstances:

- Competitive bidding, provided under 23 CFR 635.411(a)(1) *(General not applicable for projects administered by the Bureau of Local Road and Streets)*
- A certification by the contracting agency, as provided in 23 CFR 635.411(a)(2), that the specified proprietary product is either:
  - Necessary for synchronization with existing facilities; or
  - A unique product for which there is no equally suitable alternative.
- A proprietary item is to be used for research or for a distinctive type of construction on relatively short sections of road on an experimental basis as provided in 23 CFR 635.411(a)(3).
- If there are other equally acceptable materials or products available, the contracting agency may require a specific material or product when the Division Administrator approves of its use as being in the public interest as provided in 23 CFR 635.411(c).

*More information can be found at*

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

The local agency should provide a request for approval of the proprietary item on the agency's letterhead addressed to:

Mr. Charles F. Riddle, P.E.  
Bureau Chief of Local Roads and Streets – District 1  
Illinois Department of Transportation  
201 West Center Court  
Schaumburg, Illinois 60196-1096

The signed letter shall be scanned into a pdf document and e-mailed to the appropriate Phase 2 coordinator. The letter must include model numbers and catalog cuts for the requested items. If the catalog cut includes multiple models, the desired model shall be called out on the cut sheet.

The proprietary product may be obtained through competitive bidding with other suitable proprietary and non-proprietary products from multiple manufacturers. Where both proprietary and non-proprietary products are available, the specifications shall allow the contractor to choose amongst as many acceptable products and technologies as possible. If the specification lists specific products, it must list all or at least a reasonable number of products (minimum of three). **The term "or approved equal" or similar terms shall not be used.** If only one proprietary product is listed a certification, public interest finding, or experimental feature shall be used.