



INDIANA DEPARTMENT OF TRANSPORTATION

Driving Indiana's Economic Growth

Design Memorandum No. 11-15 Technical Advisory

August 18, 2011

TO: All Design, Operations, and District Personnel, and Consultants

FROM: /s/ Richard L. VanCleave
Richard L. VanCleave
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Highway Design and Technical Support Division

SUBJECT: Proprietary-Material Use

SUPERSEDES: *Indiana Design Manual Section 17-1.05*

EFFECTIVE: Immediately

To ensure competitive bidding, the designer should restrict the use of proprietary materials on a project. 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. 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. The designer should submit either a certification or a public-interest finding for the use of a proprietary material at Stage 2, but not later than Stage 3. *Indiana Design Manual* Figure 17-1A, the Transmittal Memorandum, should be included with each of the requests listed below.

1. Certification for No Suitable Existing Equal Material. If no suitable equal material exists, a Certification should be prepared. *Indiana Design Manual* Figure 17-1C should be used for this request. An editable version of this form appears on the Department's website at www.in.gov/dot/div/contracts/design/dmforms/.
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. *Indiana Design Manual* Figure 17-1D should be used for this request. An editable version of this form appears on the Department's website at www.in.gov/dot/div/contracts/design/dmforms/.

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. *Indiana Design Manual* Figure 17-1C should be used for this request. An editable version of this form appears on the Department's website at www.in.gov/dot/div/contracts/design/dmforms/.
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. *Indiana Design Manual* Figure 17-1E should be used for this request. An editable version of this form appears on the Department's website at www.in.gov/dot/div/contracts/design/dmforms/.
5. Program-Wide 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. The justification should include a work plan which details the evaluation to be conducted. A PIF (See *Indiana Design Manual* Figure 17-1E) or Programmatic Certification (See *Indiana Design Manual* Figure 17-1F) 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 currently-approved Proprietary Materials are listed in *Indiana Design Manual* Figure 17-1B.
6. Approval Process. Each request should be submitted through ERMS to the project manager, then forwarded to either the Highway Design and Technical Support Division director, or the Bridge Design Inspection Hydraulics and Technical Support Division director for approval. Approval requirements are as follows.
 - a. 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.

- b. FHWA approval is required for each Figure 17-1C experimental proprietary-material request.
- c. FHWA approval is required for each Figure 17-1E PIF request.
- d. FHWA approval is required for each Figure 17-1E Programmatic PIF request.
- e. FHWA approval is required for each Figure 17-1F Programmatic Certification request.

FHWA approval listed in b through e 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.

RVC:rb

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