

2.24 PROPRIETARY ITEMS

2.24.01 Construction Contracts

The use of trade or brand names or the direct reference to patented or proprietary materials, specifications, or processes should be avoided in contracts. This applies to all projects, NHS and non-NHS, regardless of funding source. Generic construction specifications should be developed that will obtain the desired results as well as assure competition among equivalent materials or products. There are instances, however, where a particular proprietary product must be specified for use on a project.

If only patented or proprietary products are acceptable, they shall be bid as alternatives with all, or at least a reasonable number of acceptable materials or products listed. A reasonable number would be to specify three or more equally suitable products and include the term “or approved equal”. If a product is on the approved Finding in the Public Interest list it will be noted in the specification and the term “or approved equal” is not required.

When the use of a patented or proprietary (trade name) item is essential for a project or fewer than three suitable products can be found, a Finding in the Public Interest shall show that no equally suitable alternative exists.

One or more of the following criteria must be documented in the Finding in the Public Interest to justify the use of proprietary items:

1. CDOT certifies that such patented or proprietary item is essential for synchronization with existing transportation facilities; or
2. CDOT certifies that no equally suitable alternative 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.

When research is used as the justification for using a proprietary item it must be processed through the Research Branch of the Division of Transportation Development (See [Section 8.10 Experimental Items](#) in this manual).

A Finding in the Public Interest may be written for use of a proprietary item on a specific project, for use on a region-wide basis, or for use on state-wide basis. A project-specific Finding in the Public Interest applies only to that one project and cannot be used to justify use of the proprietary item on other projects.

Finding in the Public Interest will require the approval by the Resident Engineer (for project specific), Program Engineer (for regionwide use), or Branch Manager (for statewide use). Copies of approved project specific, regionwide and statewide Findings in the Public Interest shall be distributed to the Standards & Specifications Unit. The Standards & Specifications Unit will maintain a list of the approved products.

Approved Findings in the Public Interest are valid until any of the following criteria occurs:

1. Three years have elapsed from date of approval.
2. New products are found or created that are equal to the products in the original Finding in the Public Interest.
3. Research has been completed on the patented or proprietary item and a recommendation for use of the product has been made.

If any of the above criteria occurs and the particular proprietary product must still be specified for use on a project, then another Finding in the Public Interest must be submitted for approval.

Once a proprietary item is accepted as meeting standards and a non-proprietary specification can be written, the material or product should be selected on a competitive basis.

2.24.02 Procurement Contracts

A justification letter approved by the Manager of Procurement and Contract Services to the files certifies that no equally suitable or patented item exists for use on the project and that such patented or proprietary item is essential for the construction of the project. Generally, products identified by their brand or trade name are not to be specified without an "or equal" or equivalent phrase.

A Sole Source Certification Form

<https://www.codot.gov/business/procurement-and-contract-services>

(shall be completed only for sole sources of goods or services.) This certification does not apply to situations classified as "Emergency Procurement" covered by CRS 24-103-206.

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