



U.S. Department of Transportation
Federal Highway Administration

Use of Proprietary Equipment & Sole Source Procurement Process

**UCI Meeting
March 21, 2013
Blacksburg, VA**

What Are Sole-Source / Proprietary Products?

Proprietary Product: Owned and sold by a patent holder for profit

- Ex: 3M, QuadGuard, Brifen Wire Rope Safety Fence etc.

Sole-Source Product: Obtained through non-competitive bidding

- Ex: specific supplier or trade name products in contract requirements without any chance for competition by another

Patented/Proprietary Products Eligibility

1. Competitive Bidding
 - a. Performance Warranty
2. **Certification**
3. **Public Interest Finding**
4. Experimental Project



2. Certification

FHWA Definition of a Product Certification

A certification document issued by an agency to use a single product based on specific functional and/or synchronization requirements and technically does not require an FHWA approval action.

Note - FHWA still has ability and authority, as stewards of the Federal-aid highway program, to determine non-compliance if agency justification is insufficient.



2. Certification...cont

When can a certification be used?

- Necessary for synchronization with existing facilities; or
- A unique product for which there is no suitable alternative.



2. Certification...cont

- Synchronization based on
 - Function
 - Aesthetics
 - Logistics
 - Combination of these



2. Certification...cont

What documentation is required to process a Certification?

How will this proprietary product benefit the public?

- Unique needs?
- Is a higher standard justified?

Why other potential products cannot meet the STA's or local agency's needs.

What additional costs will be incurred as a result of this proprietary product requirement?

2. Certification...cont

- May still be subject to FHWA concurrence (Q&A # 13)

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



3. Public Interest Finding (PIF)

FHWA Definition of a Public Interest Finding (PIF)

An agency request to choose one of several options (eg. product, specification, or process) that could provide acceptable service on a project or within the Federal-Aid Program which does require an FHWA approval action.



3. Public Interest Finding (PIF)

When is a Public Interest Finding (PIF) Required?

- I. Use of Patented/Proprietary Product(s)
- II. Mandatory Material Source
- III. Use of Public-owned Equipment

Note - This does not include the category of projects procured through means other than competitive bidding. In 1983 the law was changed to require this determination be based on Cost Effectiveness.



3. Public Interest Finding (PIF)

What documentation is required to process a PIF?

- STA or local agency submits the PIF to the FHWA for approval.
- No specific format required
- We recommend:
 - Description of need
 - Limitations & Conditions (Scope)
 - Engineering / economic analysis ; and
 - Duration of approval



3. Public Interest Finding (PIF)

When is a Cost Effectiveness Finding required?

Procurement other than competitive bidding

- Special course of action
- Lack of bids
- Unreasonable bid unit costs
- Agency force account
- Railroad/Utility facility improvements

Emergency

- Force account
- Negotiated contract method
- Minimum documentation elements



Certification vs. PIF ?

PIF

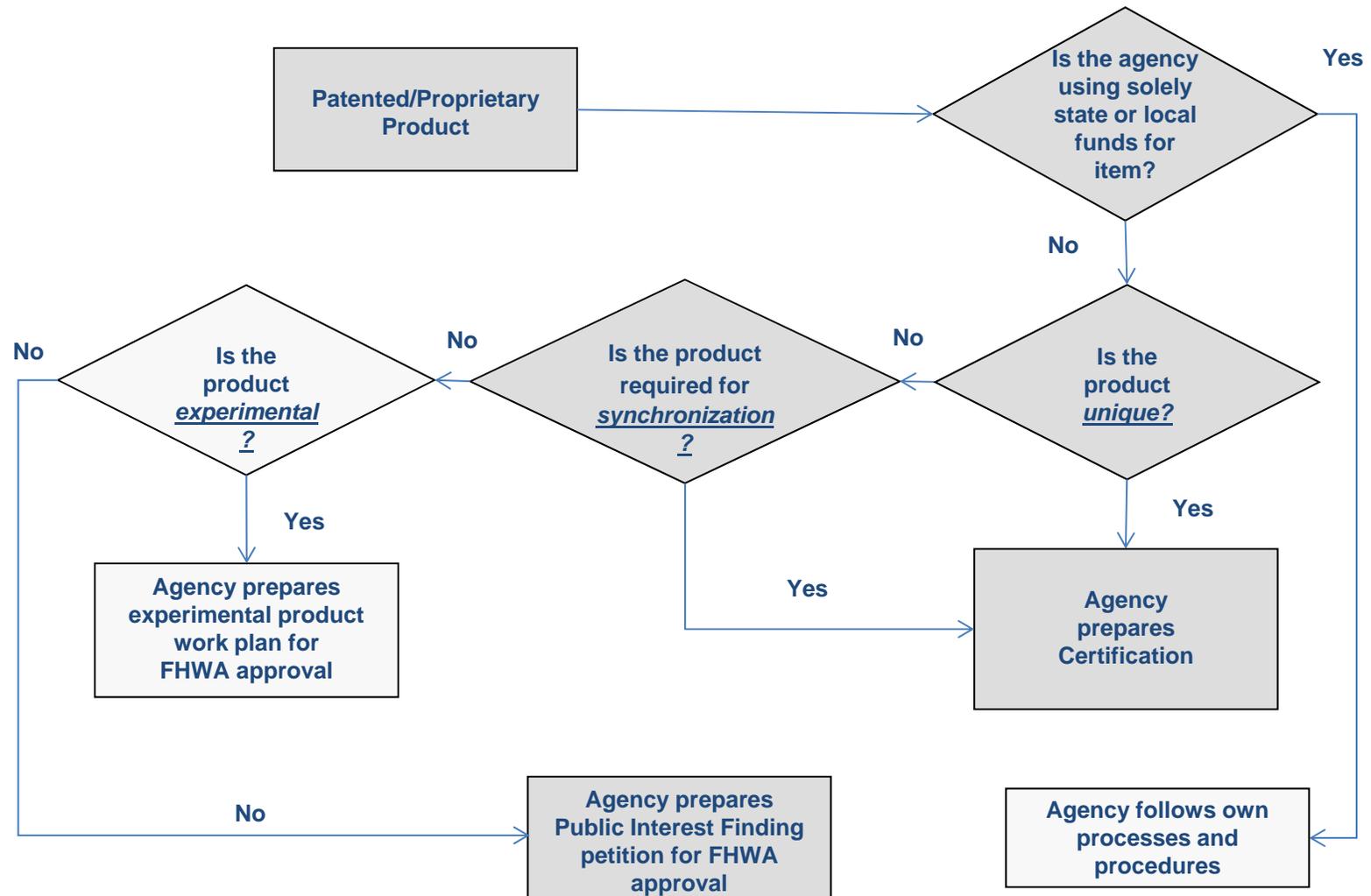
Multiple available products
providing competition

Certification

- No equally suitable alternate
- Unique Considerations (ie., “above average” performance measures)
- Synchronization



Certification vs. PIF ?



3. Public Interest Finding (PIF)

Does FHWA track approved PIFs?

- FHWA HQ Office of Program Administration
 - Tracks all approved PIFs nationwide
 - Uses PIF information to develop guidance and ensure program consistency

<http://www.fhwa.dot.gov/construction/contracts/pnpap/provals/approvals.cfm>

- Divisions submit approved PIFs for database

- FHWA Stewardship Portal Link

<https://one.dot.gov/fhwa/CPMDSS/FECPM/PIF/default.aspx>



PIFs Vs. Certification Recap

- Use under unique circumstances
- PIF required under following conditions:
 - Proprietary/patented products
 - Mandatory Material Source
 - Use of Public-owned Equipment
- Documentation detail and information is dependent on PIF petition type
- PIF involves multiple sources (FHWA approval)
Certification is single unique source (No FHWA approval)



Public Interest Finding (PIF) References

Title 23 C.F.R. § 635.411(c)

Title 23 C.F.R. § 635.106

Title 23 C.F.R. § 635.407

23 USC § 112

FHWA website(s):

Contract Administration Manual

– <http://www.fhwa.dot.gov/programadmin/contracts/coretoc.cfm>

PIF Program Guide

– <http://www.fhwa.dot.gov/construction/cqit/findings.cfm>



Sole Sourcing

What Does Sole-Sourcing Look Like?

- You don't have to have a trade name in your specifications to have a sole-source requirement
- If your specification is so narrowly defined that only 1 product can bid and meet the requirements, it could be considered a sole-source requirement
 - If your Qualified Products List only allows one vendor/type of material, it could be considered a sole-source requirement



Sole Sourcing...cont.

Can a Trade Name be Included in a Specification?

- Is it included to demonstrate a standard of quality and not construed as limiting competition?
- Are there a reasonable number of alternatives that meet the performance requirements and either listed or readily available and known?
- Is there more than one trade name listed?
- Do the requirements specify "or equal"?
- Did you answer yes to the above questions?
 - Then the answer is YES



Sole Sourcing...cont.

Registered Trademark

FX-70® PILE PROTECTION SYSTEM WITH PUMPABLE EPOXY GROUT

Description

The work under this section shall include furnishing and installing a permanent outer jacket, made from durable, inert corrosion-free materials and filling the annular space between the pile and the permanent jacket with a Hydro-Ester, Pumpable Epoxy Grout, constructing a bevel at the top of the jacket with a trowel grade hydro-ester grout and applying a hydro-ester protective coating to the pile between the top of the jacket and the underside of the bent. All materials shall be compatible and shall be manufactured by a single source.

Materials



Sole Sourcing...cont.

Graphics
Inserted

Section 668— Miscellaneous Drainage Structures

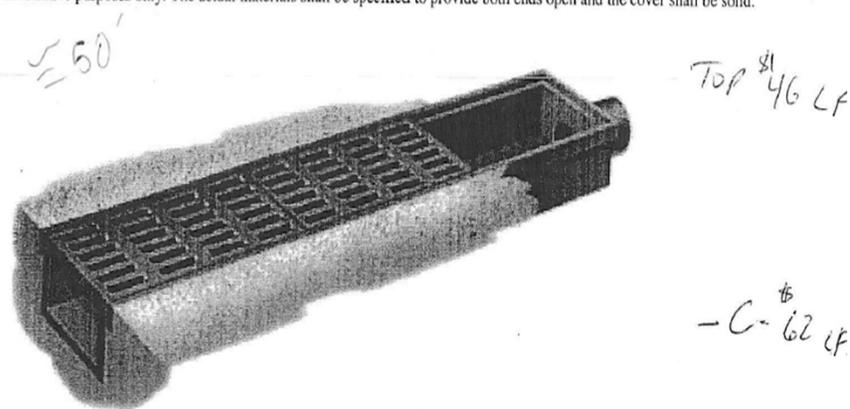
Add the following: **Trench Drain**

668.1 General Description

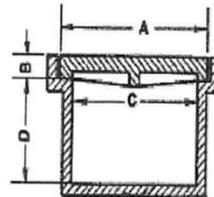
The work specified in this section consists of installing cast iron trench drain assemblies conforming to these specifications and as shown on the contract plans. The work shall include forming and pouring concrete sides and bottoms, installing trench frames, and solid covers.

668.2 Materials

Trench Frame and Cover - The cast iron trench frame shall be Neenah R-4996-B1 or equal. The drawing below is for illustrative purposes only. The actual materials shall be specified to provide both ends open and the cover shall be solid.



The diagram below is a cross-section of the required trench drain and cover. The table shows nominal dimensions.



TRENCH FRAME DIMENSIONS, In.			
A	B	C	D
11.5	1.5	10	6

Sole Sourcing...cont.

Special Restrictions Issued

LIMITATIONS:

Due to the pre-inspection and field evaluation requirements, the following limitations shall apply:

- Maximum of five (5) projects per year per manufacturer
- Maximum of 1500 SF of sheeting per project
- New construction projects only – Not allowed on State-wide or District-wide sign projects due to field monitoring requirements
- Roadside signs only – Not allowed on Overhead signs, including extruded panel and span cable type I & II, due to field monitoring requirements

End of
PIF and Product Certification
Presentation

Question & Answer Session

