

**Tennessee Department of Transportation
Division of Materials and Tests**

**Procedures for Using Patented or Proprietary Products
(SOP 1-5)**

- Purpose:** The purpose of this document is to establish the procedures and requirements to use patented or proprietary products (PPP) on any TDOT or Local Program Developed Projects.
- Background:** Prior to being rescinded on September 27, 2019, the Code of Federal Regulations (CFR), 23 CFR 635.411, did not allow federal funds to be used for patented or proprietary product (PPP) unless certain conditions were met or a public interest finding was made. In the absence of Federal requirements, it is necessary to have a defined approval process to use PPP on TDOT or TDOT assisted projects to ensure funds are properly spent and a level of competition exists for products.
- Policy:** Designers and specifiers should not design/specify the use of a patented or proprietary product unless necessary and justifiable. When a PPP is needed, the requesting Division/Local Agency must do so in accordance with the following procedure.

TCA 54-1-205(a) states that “It is unlawful for any employee of the department of transportation to encourage in any manner the purchase of any particular material or product or to assist in the initiation of requisitions for any materials or products to be purchased by any department of this state when such employee is directly interested as defined in § 12-4-101 in such material or product.”

- Procedure:** A PPP may be specified without approval if done so in accordance with the following “Competitive Bidding” process.

Competitive Bidding- The proprietary product is obtained through competitive bidding with other suitable proprietary and non-proprietary products from multiple manufacturers. When it is determined a patented or proprietary product is needed and there are no non-proprietary products, the designer must identify at least three (3) “equal” PPP and identify them on the plans or in a provision. If three (3) are not identified, then two (2) products must be identified and include the words “or equal” with the required properties to be considered equal to the others specified (e.g. “Or equal” products may be considered if they are a minimum of 48 inches in length, blue in color, have a minimum flexural strength of 750 PSI, and are made of either galvanized steel or aluminum).

One (1) of the three (3) following methods, “Certification”, “Experimental/Research”, or “Justified Need”, may be used to request approval for the use of a PPP.

Certification- A signed statement from the Division Director, or the Local Agency Representative, certifying that a particular patented or proprietary product is either: 1) **Necessary for synchronization** with existing facilities*; or 2) A unique product for which **there is no equally suitable alternative**. Approval must be obtained by the Assistant Chief Engineer of Operations or the Assistant Chief Engineer of Design, OR

Experimental/Research- A patented or proprietary product may be used for research or for a distinctive type of construction on relatively short sections of road on an experimental basis.

The Division Director, or the Local Agency Representative, must submit a request letter that identifies what is specifically being researched and what the anticipated outcome will be after evaluation of the proprietary product. If appropriate, a comparison with current technology and products should also be made. Approval must be obtained by the Assistant Chief Engineer of Operations or the Assistant Chief Engineer of Design, OR

Justified Need- If the requesting Division or Local Agency wishes to use a patented or proprietary product and **there are other equally acceptable materials or products available**, then a “Justification of Need” (JON) must be completed. The JON must concisely explain why it is necessary to use/specify a PPP. In general, the JON should include:

- Why the PPP specified is needed for the project;
- A description of how the PPP will benefit the TDOT/Local Agency and why it is the best use of public funds;
- Identify other “equal” products and why they are not acceptable;
- An estimate of additional costs incurred as a result of this proprietary product requirement;
- It may include engineering and economic considerations, product availability and compatibility, logistical concerns, and other unique considerations.

Approval must be obtained by the Assistant Chief Engineer of Operations or the Assistant Chief Engineer of Design. The attached letter can be used as a guide.

If a product or process is approved for use under one of the previous procedures/categories it will be approved for use for the time appropriated and [listed on the Materials and Tests website](#). The “Certification” or “JON” should specify if a product is needed for more than one project and identify the time period (maximum 3 years) in which the PPP is needed.

For **Local Agencies**, there may be instances where the use of patented or proprietary products are not approved in accordance with the above procedures and the product may be used as a non-participating cost (100% local funds). This would require approval of the Assistant Chief Engineer of Operations or the Assistant Chief Engineer of Design. The Local Agency Representative must make the request to use 100% local funding.

* Synchronization with Existing Facilities:

The product that matches specific current characteristics of a project. Synchronization may be based on:

- Function- the proprietary product is necessary for the satisfactory operation of the existing facility (e.g. traffic control/signal hardware compatibility),
- Aesthetics- the proprietary product is necessary to match the visual appearance of existing facilities (e.g. light pole and fixture design)
- Logistics- the proprietary product is interchangeable with products in an agency's maintenance inventory (e.g. underground sprinkler system parts)



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**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION**

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BUTCH ELEY
COMMISSIONER

BILL LEE
GOVERNOR

TO: Mr. Benjamin Price or Jeff Jones
Assistant Chief Engineer of Operations/Design

FROM: Division Director

SUBJECT: **Proprietary Item Request and Justification**

Project Number/ Contract Number/ PIN Number

**EXAMPLE
STATEMENT or
REQUEST
LETTER**

The (fill-in the name of the requesting Division/Local Agency) request approval to utilize the following patented or proprietary product in accordance with the allowable procedure in TDOT SOP 1-5: Certification, Experimental/Research, or Justified Need.

Project Description

Provide a brief, overall project description. It should include (Project Number/ Contract Number/ PIN Number etc.)

Patented or Proprietary Product requested

Identify the manufacturer and name/model of the product seeking approval for use

Certification or Experimental/Research, or Justified Need

Complete this section with the narrative as required in the TDOT SOP 1-5, Procedures for Using Patented or Proprietary Products for the respective method

If you have any questions or comments, please contact (give contact information for the person that can answer questions)

I, (fill-in the name of the appropriate Division Director), Division Director, of the Tennessee Department of Transportation, do hereby certify that in accordance with the requirements of Procedures for Using Patented or Proprietary Products (SOP 1-5) that it is in TDOT's best interest to use the patented or proprietary product specified.

Approved: _____ Date: _____

Assistant Chief Engineer of Operations/Design