

DATE: February 5, 2021

SUBJECT: Proprietary Item Submittal and Approval Process

TO: District Executives

FROM: T Jay Cunningham, P.E., Acting Director
Bureau of Maintenance and Operations



This Strike-off Letter (SOL) is time and resource neutral and provides guidance on the proprietary item submittal/approval process for traffic control devices. It will be incorporated into Chapters 1 and 4 of Publication 46: *Traffic Engineering Manual*, as part of a future update to the publication. This policy supersedes language currently in Publication 46 on this topic.

Patented or proprietary products no longer require Federal Highway Administration (FHWA) approval pursuant to a [final rule](#) issued by FHWA on September 27, 2019. This final rule rescinded the long-standing regulatory provisions for patented or proprietary products in 23 CFR 635.411(a)-(e), and eliminates the requirements limiting the use of Federal funds in paying for patented or proprietary materials, specifications, or processes.

Although FHWA approval is no longer required for proprietary items, Chapter I.19 of Publication 51: *Plans, Specifications and Estimate (PS&E) Package Delivery Process Policies and Preparation Manual*, still requires proprietary approval for PS&E packages bid through the Department's Electronic Construction Management System.

Proprietary requests dealing with traffic signal equipment shall be electronically submitted to the TSMO Arterials & Planning Section resource account, signals@pa.gov. A template request letter is available at <http://www.dot.state.pa.us/public/Bureaus/BOMO/Portal/Proprietary%20Item%20Approval%20Request%20Template.docx>.

Should you have any questions or require additional information, please contact Benjamin Flanagan, Manager, Traffic Signals Unit, at 717.705.1448.

Attachment

4940/BJF/hmq

cc: Assistant District Executives-Construction
Assistant District Executives-Design
Assistant District Executives-Maintenance
Louis Belmonte, P.E., Assistant District Executives-Services, District 6
Maintenance Services Executives
District Traffic Engineers
District Traffic Signal Supervisors
Brian Thompson, P.E., Director, BOPD
T Jay Cunningham, P.E., Acting Director, BOMO
Douglas Tomlinson, P.E., Chief, Highway Safety and Traffic Operations Division, BOMO
Stephen Gault, P.E., PTOE, Chief, TSMO Arterials and Planning Section, BOMO
Robert Pento, P.E., Chief, Traffic Engineering and Permits Section, BOMO
Benjamin Flanagan, Manager, Traffic Signals Unit, BOMO
MJB Read File

Proprietary Items

When preparing specifications for a project, specifying the use of a brand name is proprietary. Similarly, using one company's specification that other companies cannot match is also proprietary. The use of proprietary materials, products and processes in the bid package is governed by PennDOT Publication 51, *PS&E Package Delivery Process Policies Manual*, Chapter I.19 – Standard & Proprietary Materials/Products/Processes Specifications.

Therefore, when an adequate generic specification cannot be prepared for a traffic control device (e.g. traffic signal equipment, intelligent transportation systems (ITS), temporary traffic control, pavement markings and/or sign), specify at least two brand names followed by "or approved equal." If two or more brand names are unavailable or if the District or municipality desires a certain brand name, specific approval is necessary.

Projects that involve proprietary items, for traffic control devices, shall be routed for approval by the Director for the Bureau of Maintenance and Operations (BOMO) for all PS&E packages bid through ECMS in a form similar to the example in the Chapter 1 Appendix.

When submitting a request, provide justification with the following information:

1. Letter from local government with justification, if applicable.
2. Reasons why a "generic" material description cannot be used, or two or more companies cannot be specified. Examples of acceptable justifications are:
 - a. The item is essential for synchronization with existing highway facilities and no suitable alternative exists.
 - b. The item is being used for research or for relatively short sections of road for experimental purposes.
 - c. No other items exist that are of acceptable quality.
3. If the item is not integral to construction, indicate the disposition of the item after construction.
4. See Section 4.6 for additional justification for traffic signal equipment.

Although FHWA approval is not required, Publication 51 requires proprietary approval for PS&E packages bid through ECMS. The District is responsible to scan and link the approval/disapproval in ECMS. The approval letter should be submitted so that approvals can be obtained before PS&E submittal or project advertisement.

Adherence to the above will ensure that approvals are obtained in a timely manner.

"On September 27, 2019, FHWA issued a final rule in the Federal Register rescinding the long-standing regulatory provisions for patented or proprietary products in 23 CFR 635.411(a)-(e). This rule provides greater flexibility and encourages innovation in the selection of proprietary or patented materials. It eliminates the requirements limiting the use of Federal funds in paying for patented or proprietary materials, specifications, or processes."

<https://www.fhwa.dot.gov/construction/cqit/propriet.cfm>

Chapter 1 Appendix

Proprietary Item Approval Request Sample Letter

DIS-900 (12-15)



pennsylvania
DEPARTMENT OF TRANSPORTATION

MEMO

DATE: [Enter Date Here]

SUBJECT: SR [SR] Section [Sec] ECMS # [ECMS]
Proprietary Item Approval Request

TO: [Enter Bureau Director Name here]
Director, Bureau of Maintenance and Operations

FROM: [Enter Name Here]
District Executive
Engineering District XX-0

We are providing the following information for Proprietary Item Approval.

[INSERT A SHORT PROJECT DESCRIPTION]

We seek approval for the following item(s):

1. [Insert Item]

This request is in compliance with Publication 51, Chapter I.19, Standard & Proprietary Materials, Products/Processes Specifications as indicated on the attached Traffic Signal Proprietary Item Analysis Engineering and Traffic Study (Form TE-152).

The District concurs with the justification provided herewith [by the municipality/township/city] and requests your approval for the subject proprietary item(s).

If you have any questions on this matter or require any additional information, please contact (Name) at (###) ###-####.

Attachment(s)

Approval _____ **Date** _____
Director, Bureau of Maintenance and Operations

Engineering District XX-0
Address | City, PA zip code | phone number | www.penndot.gov

Request for Proprietary Specifications

Publication 51 details the specifications and criteria for the use of proprietary items on transportation projects.

The Department will only accept the following proprietary specifications:

- Controllers
- Traffic Signal Structural Supports
- Accessible Pedestrian Signals (APS)
- Emergency Preemption devices that use the lock out feature
- Video or Radar Detection Systems using the same software throughout the Municipality
- Type 170 or 2070 software requests
- Adaptive Traffic Control Systems
- Controller Software
- Spread Spectrum Radio which is part of an existing system
- Battery Backup
- Additional future items that are identified in the list above

Occasionally the Department receives requests from municipal officials to specify a particular brand of traffic signal equipment, in the special provisions for a project. Although it is the policy of the Department to use non-proprietary specifications on all projects, PennDOT will review requests of this type to determine if this equipment is essential for compatibility with existing signal equipment or if it is in the public interest to obtain major signal equipment from a particular manufacturer.

Consideration of proprietary specifications, early in a project's design phase, will allow municipal officials to obtain the necessary approvals and understand any future project cost implications.

Therefore, if there are two or more equal products then proprietary approval is not required. When the products are listed by "brand" or trade name, then provide:

- All products are of satisfactory quality and are equally acceptable based on an engineering analysis.
- The anticipated prices for the related items of work are approximately the same.

To receive approval from the Department, municipal officials shall provide documentation that the following criteria are true:

1. More than 75% of the municipality's current traffic signal equipment is from one particular manufacturer.
2. Has substantial inventory of that manufacturer's spare parts
3. The municipality's maintenance personnel have received extensive training and are experienced in the installation and maintenance of this manufacturer's equipment.

A municipality that uses a signal maintenance contractor for major controller repairs, or installation, may still meet the above criteria for controllers. However, the municipality would not be able to qualify if the contractor maintains equipment for various municipalities using other manufacturers' brands

4. Provide reasons why two (2) additional or a "generic" brand cannot be utilized. Examples of acceptable justifications would be:
 - The item is essential for synchronization, with existing highway facilities, and no suitable alternatives exist.
 - Item is being used, on relatively short sections of road, for experimental/research purposes.
 - Other brands of equipment do not meet acceptable quality standards.
 - A single intersection is either being added or being replaced within an existing coordinated system.

After the municipal officials provide written documentation that their signal program meets the criteria, the District should review and submit the information, with their recommendation, to the TSMO Arterials & Planning Section resource account (signals@pa.gov) for review and approval from the BOMO Bureau Director. All requests for proprietary traffic signal equipment shall be supported by a completed Traffic Signal Proprietary Item Analysis Engineering and Traffic Study ([Form TE-152](#)).