

**New Jersey Department of Transportation
QUALITY IMPROVEMENT ADVISORY**

QUALITY MANAGEMENT SERVICES

Director: Richard Jaffe Telephone: (609) 530-5643

QIA No.: 054

Approved: Richard Jaffe
Date: May 15, 2013

Subject: Patented/Proprietary Items

Process Affected:

Scope Design Right of Way Utilities Environmental Historic Construction

Affected Areas:

Department-wide; Design Consultants & Contractors

Procedure(s) Affected:

Construction Cost Estimating Guidelines

Nature of Issue(s):

To clarify the process to use a proprietary Item/material/equipment on FHWA funded contracts.

In addition, a formal process to use a proprietary Item/material/equipment on non-FHWA funded contracts has been established.

Recommendation(s):

Proprietary Items

The use of a proprietary Item/material/equipment can be specified in a contract only by following the directions provided below.

FHWA Funded Contracts

The use of any Proprietary Item(i.e. Lumi Trak) or material requires a FHWA waiver according to 23 CFR 635.411. To obtain this FHWA waiver, form DF15, *Request for Approval of Patented/Proprietary Items on FHWA Funded Contracts*, must be completed and submitted by the designer to the Project Manager (PM) for review and signature. The PM will prepare a cover letter and submit with the form to the FHWA for approval.

Upon receiving an FHWA approval, the PM will notify the designer. The designer must follow the instructions provided under subsection 106.09 of the Standard Input (SI2007).

An FHWA waiver is not required if a minimum of three manufactures/suppliers of said item are listed in the Special Provisions along with the generic specifications for the Item/material/equipment. The designer must include the following text preceding the list of manufacturers/suppliers in the appropriate subsection of the Special Provisions.

“The following manufacturers/suppliers are capable of manufacturing/supplying the Item/material specified for this Contract. This list is not intended to be a complete list of potential manufacturers/suppliers.”

The generic specifications will allow the Contractor to submit an alternate Item/material/equipment request to the RE.

Non-FHWA Funded Contracts

The procedure for the use of any Proprietary Item(i.e. Lumi Trak) /material/suppliers on the non- FHWA funded contracts models the procedure for the FHWA funded contracts as described above, except that form DF-16, *Request for Approval of Patented/Proprietary Items on Non- FHWA Funded Contracts*, must be completed and submitted by the designer to the PM for review and signature. The PM will prepare a cover letter and submit with the form to the Director of Capital Program Support for approval. Upon receiving an approval, the PM will notify the designer. The designer must follow the instructions provided under subsection 106.09 of the Standard Input (SI2007).

A waiver is not required if a minimum of three manufactures/suppliers of said item are listed in the Special Provisions along with the generic specifications for the item/material/equipment. The designer must include the following text preceding the list of manufacturers/suppliers in the appropriate subsection of the Special Provisions.

“The following manufacturers/suppliers are capable of manufacturing/supplying the Item/material specified for this Contract. This list is not intended to be a complete list of potential manufacturers/suppliers.”

Forms DF15 and DF16 are attached.

This QIA is to be in effect until the *Construction Cost Estimation Guidelines* are updated.

The BDC Announcement BDC09T-03 dated Dec 11, 2009 is hereby superseded.

Impact Assessment:	Cost Impact:
<input type="checkbox"/> Schedule <input checked="" type="checkbox"/> Quality <input type="checkbox"/> Cost <input type="checkbox"/> Scope	None

Implementation: Immediate