NEW JERSEY DEPARTMENT OF TRANSPORTATION

REQUEST FOR APPROVAL OF PATENTED/PROPRIETARY ITEMS ON NON-FHWA FUNDED CONTRACTS

State funds are not to be participate, directly or indirectly, in payment for any patented and proprietary material, specification, or process set forth in the Plans and specifications for a contract unless:

1. The patented or proprietary item is purchased or obtained through competitive bidding with 2 or more **equally** suitable unpatented items; or
2. The Designer certifies either the patented or proprietary item is essential for synchronization or no suitable alternative exists; or
3. The patented/proprietary item is used for research or for a distinctive type of construction on relatively short sections of road for experimental purposes.

Section A: STATE CERTIFIES AND/OR REQUESTS A PUBLIC INTEREST DETERMINATION FOR

☐	**Synchronization with existing facilities**
☐	**No suitable Alternative/Sole Source**
☐	**Experimental or Research Purposes**
☐	**Other (explain)**

Section B: SPECIFIC CONTRACT INFORMATION

DP#:		Project Description:
Route:		
Section:		
County:		

Section C: PRODUCT DESCRIPTION

(NOTE: Provide detailed information concerning the intended use of the product. Attach relevant product information as warranted.)

Section D: REASONS FOR REQUESTED APPROVAL

(NOTE: Justification should document engineering and economic considerations, product availability and compatibility, logistical concerns, and other unique considerations. The purpose is to document a finding of public interest. Attach supporting documentation as deemed appropriate by NJDOT.)

Section E: SIGNATURE BLOCKS

REQUESTOR SIGNATURE:	REQUESTOR NAME & TITLE	DATE:

Section F: TO BE COMPLETED BY MANAGER OF QUALITY MANAGEMENT SERVICES

REMARKS

APPROVED BY:	NAME & TITLE	DATE:

Questions and Answers Regarding Waivers

1. What is a proprietary product?

Generally, this is a product, specification, or process identified in the plans or specifications as a "brand" or trade name (e.g. 3M, Corten). However, it may also be a product so narrowly specified that only a single provider can meet the specification.

2. Are patented products considered proprietary?

Yes, if the patented product is identified within the Plans or specifications as a "brand" or trade name; or the specification is written so that only the patented product can meet the specification.

3. If the patent of a product expires, does the Designer still need to certify and/or request to utilize the product for the product to be considered for use?

Depends upon the situation. If the patent expires but the product's name is identified within the Plans and specifications without 2 or more equally suitable alternates then the product is considered proprietary.

4. What is an example of a patented or proprietary item meeting the requirements of having 2 or more equally suitable alternates?

For examples of patented or proprietary items meeting the requirements of having 2 or more equally suitable alternates, review the NJDOT's Qualified Products List. In particular, for "reflective sheeting" there are several products under the material category of Reflective Sheeting, Type III that satisfy the 2 or more equally suitable alternates condition.

5. If a patented or proprietary item meets the requirements of having 2 or more equally suitable alternates, is a waiver still required?

No as long as the Plans, specification, or qualified products list identifies all 3 products (ie. patented or proprietary item and the 2 equally suitable alternates), a waiver is not required.

6. **What should the Designer consider during the material selection process?**

If there are a limited number of products available that may meet the proposed specifications, the Designer should undertake an engineering and economic analysis. The analysis should address the following questions:

- Are there other products on the market that meet the specifications?
- Are these products of satisfactory quality? and,
- Are the anticipated costs for the products are approximately the same?

The extent of the analysis should be appropriate for the value and complexity of the products involved, using life cycle cost analysis to develop cost comparisons based on comparable designs to meet product requirements using the anticipated service life for each product.

7. **May a Designer set "above average" performance standards for a product?**

Yes. A Designer may specify a higher or "above average" standard of performance on certain construction projects. However, if this "above average" standard reduces the pool of suitable products to a single proprietary product, the Designer must then prepare a waiver, which would document its minimum needs and support its contention that such a performance standard is necessary and reasonable to achieve these needs.

8. What factors should be considered when basing the use of a proprietary product on synchronization?

Synchronization may be based on function (the proprietary product is necessary for the satisfactory operation of the existing facility), aesthetics (the proprietary product is necessary to match the visual appearance of existing facilities), logistics (the proprietary product is interchangeable with products in with an agency's maintenance inventory) or a combination of the three.

9. What should be included in a Designer request to use a patented or proprietary product for research or experimental purposes?

If the Designer requests to use a patented or proprietary product for research or for a distinctive type of construction on a relatively short section of road for experimental purposes, it must submit an experimental product work plan for review and approval. The work plan should provide for the evaluation of the proprietary product, and where appropriate, a comparison with current technology.