



STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

KIRK T. STEUDLE
DIRECTOR

June 1, 2010

Mr. John D. Niemela, Director
County Road Association of Michigan
P.O. Box 12067
Lansing, Michigan 48901-2067

Mr. Christopher Hackbarth
Legislative Associate
Michigan Municipal League
208 North Capital Avenue, 1st Floor
Lansing, Michigan 48933-1354

Dear Mr. Niemela and Mr. Hackbarth:

Procedure for Approving Sole Source Pay Items

Enclosed are current updated guidelines for the Michigan Department of Transportation Local Agency Program (LAP) Procedure for Approving Sole Source Pay Items. Please forward this information on to your constituents and members.

This procedure is the written process that LAP staff engineers have followed in reviewing and approving requests from various local agencies and their consultants to allow a single source for some construction items.

This process has been reviewed and approved by the Federal Highway Administration.

If you have other questions, or need further information, please contact Mr. Rudolph S. Cadena, Local Agency Programs Engineer, at (517) 335-2233, or Bruce Kadzban, LAP Rural & Enhancement Unit Manager, at (517) 335-2229.

Sincerely,

Bradley C. Wieferich, P.E.
Engineer of Design

Enclosure

cc: R. Cadena S. Guerrazzi
B. Kadzban ✓ K. Cooper
M. Harbison

**Michigan Department of Transportation
Local Agency Programs**

**Procedure for Approving Sole Source Pay Items
(Applicable to Federally Funded Projects)**

April 14, 2010

A local agency occasionally encounters a need to request a specific or sole source product for use on a construction project using federal funds. The item is typically utility related, or when a similar product is used in other locations within a local jurisdiction. This allows the local agency to maintain a uniform inventory, and helps ensure the efficient repair or replacement of the item.

Title 23 of the Code of Federal Regulations establishes the allowance criteria for sole source specifications, in section 23CFR 635.411.

The MDOT Local Agency Program (LAP) procedure for reviewing and approving such requests for sole source specifications is as follows:

- 1) The local agency will provide a written request for the sole source approval to the LAP staff engineer, including the following documentation:
 - a. Local agency's justification for the request, supported by 23CFR and the attached FHWA clarification
 - b. A draft special provision indicating which manufacturer(s) will be acceptable for the project, and include the proposed specialty pay items associated with the work
- 2) The LAP staff engineer will review the justification request and the proposed special provision. If required, the staff engineer will request modifications in the special provision to comply with the federal guidance. If the sole source request is not or cannot be approved, the LAP staff engineer will notify the local agency in writing, indicating the disapproval. An email message to the local agency contact, with a copy to its consultant if applicable, is an acceptable response method.
- 3) Once all documentation is complete and meets federal regulations, the LAP staff engineer will reply to the local agency in writing indicating the sole source specification request is approved. An email message to the local agency contact, with a copy to its consultant if applicable, is an acceptable response method.
- 4) The approved sole source special provision will then be included in the final proposal. The local agency will include the specialty pay items from the special provision and the appropriate "7000" pay item code in the final construction cost estimate.
- 5) The local agency will provide the LAP staff engineer with its estimated price for the specialty items, as part of its final construction cost estimate.

**Additional FHWA Guidance
for
Approving Sole Source Pay Items**

FHWA policy prohibits contracting agencies from requiring the use of a patented or proprietary material, specification, or process, unless:

- The item is purchased or obtained through competitive bidding with equally suitable proprietary and non-proprietary products from multiple manufacturers unpatented items, or
- The contracting agency certifies either that the proprietary or patented item is either essential for synchronization with the existing highway facilities or that no equally suitable alternative exists, or
- The item is used for research or for a special type of construction on relatively short sections of road for experimental purposes. In such cases, the contracting agency should follow FHWA's Construction Projects Incorporating Experimental Features.

The following is from "Questions and Answers Regarding Title 23 CFR 635.411", taken from the FHWA website:

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

11. 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 within an agency's maintenance inventory)

or a combination of the three. This may be best demonstrated by the following examples:

- A Federal-aid construction project in City A includes the replacement of traffic signals and controllers in the downtown area. The City's existing signal control system is compatible with only Controller X. As part of its Downtown Beautification Plan, the City has specified Signal Pole Y for all intersections in the downtown area. To ensure FHWA participation, the local agency should provide sufficient documentation to support both functional and aesthetic synchronization, which could merely consist of a statement from the City justifying its decision to specify Controller X (functional synchronization with control system) and Signal Pole Y (aesthetic synchronization with signal poles).
- A Federal-aid construction project includes the replacement of existing substandard guardrail end terminals with those conforming to NCHRP 350 requirements. Upon project completion, the County will be responsible for the maintenance of the project. End Terminal T, which is NCHRP 350-compatible, has been constructed on other County-maintained routes in the vicinity. Due to scarce financial and labor resources, it desires to stock only one type of NCHRP 350-compatible end treatment, and has requested that the local agency specify Terminal T. To ensure FHWA participation, the local agency should address these logistical issues in its supporting documentation.