



# MEMO

April 2, 2021

**To:** District Engineers, Division Directors, Directors of Traffic Operations, Directors of Maintenance Operations, Directors of TP&D

**From:** William L. Hale, P.E.  
Chief Engineer

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*William L. Hale*  
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**Subject:** Requirements for Proprietary/Sole Source Product Procurement Approval

The Federal Highway Administration (FHWA) revised its guidance on the use of proprietary products and have deferred this approval process to each state agency. Therefore, TxDOT requirements on approval for use of proprietary/sole source products on all construction and maintenance projects are as follows:

All requests for use of proprietary/sole source products must be submitted to the appropriate Engineering Division for review and approval based on subject matter expertise of the device in question. This request should be submitted during the construction/maintenance project's design phase to allow for adequate review time of this request.

This request must include product details (model name, number, etc.) and justification on why this specific product is required. Examples of acceptable justifications include:

- A specific project need justifies the use of a proprietary device or product in which no suitable alternate is available, or
- There is a need for compatibility because of:
  - Function (operates with an existing facility)  
e.g., The city's existing signal control system which contains a significant percentage of intersections is already working with only one brand and model of controller, or
  - Aesthetics (match the visual appearance of an existing facility)  
e.g., A specific light pole in a city historical area or specific light pole designated in the vicinity of previous projects, or
  - Logistics (interchangeable with products in an agency's maintenance inventory)  
e.g., Due to scarce county financial and labor resources, specifying one type of MASH compliant end treatment already in use and maintained by the county which will be responsible for maintenance of this location, or
  - Safety (upgrade to higher safety criteria)  
e.g., Desire to use latest crash test criteria device (e.g., MASH) when there is only one such proprietary device available for that category of device, and the other devices within that category meet a lesser criteria.

For requests initiated by a local government, it is the district's responsibility to verify that the request justification is valid and state district concurrence in the request for approval.

A generic template for this request memo is attached, and can also be found at <https://tntoday.dot.state.tx.us/des/Pages/Roadway%20Design.aspx>

The final approval will be by the Division Director, or a designee as delegated by the Division Director. The final approved memo will be retained with the District's project files.

Additionally, Form 2440 (Design Summary Report) will be updated in the future to add a check for Proprietary/Sole Source Products to the "Proposed Miscellaneous Elements" page.

This updated process is effective immediately and will be incorporated into the TxDOT Project Development Process Manual, and PS&E Preparation Manual when the next updates are published.

The points of contact (Subject Matter Experts) for the submittals to the respective Division are as follows:

Kenneth Mora, P.E. (DES) - Roadway Design Section Director, (512) 416-2678  
Taya Retterer, P.E. (BRG) - Bridge Standards Engineer, (512) 416-2719  
Barbara Russell, P.E. (TRF-TM) - Engineering Support Branch Manager (ITS & Traffic Signals)  
(512) 506-5116  
Tamara Gart, P.E. (TRF-TE) Engineering Operations Branch Manager (Signing & Illumination)  
(512) 416-3122  
Harsh Doshi, P.E. (MNT) - Field Engineering Support, (512) 416-3185

Attachment: Sole Source Use Request Form

CC: Quincy D. Allen, P.E., ADM  
C. Michael Lee, P.E., ADM