



NORTH CAROLINA
Department of Transportation

Proprietary Products Lunch and Learn June 27, 2024 Amendment

October 24, 2022 – June 27, 2024 Amendment

Connecting people, products and places safely and efficiently with customer focus, accountability and environmental sensitivity to enhance the economy and vitality of North Carolina

Proprietary Product Lunch and Learn 06-27-24 Amendment Agenda

As a result of [N.C. Gen Stat §136-28.1](#) added June 27, 2024, impacts to these portions of the October 2022 Lunch and Learn session are as follows:

- Proprietary Product Law
- Supporting Documents
- Proprietary Products Website
- Proprietary Products Policy
- Proprietary Product Roles and Responsibilities
- Concluding Thoughts

Please note: All presentation content remaining that were not amended from that lunch and learn session still apply. Slides 1, 3, 11, 12, 15, 16, 17, 18, 21, 34, 35, 40, 41, 47, 48, and 52 are amended slides from the prior lunch and learn; slide 10 and 11 in this presentation are new slides.

Proprietary Product Law

Proprietary Product Law

NCDOT is governed by [N.C. Gen Stat §133-3](#)

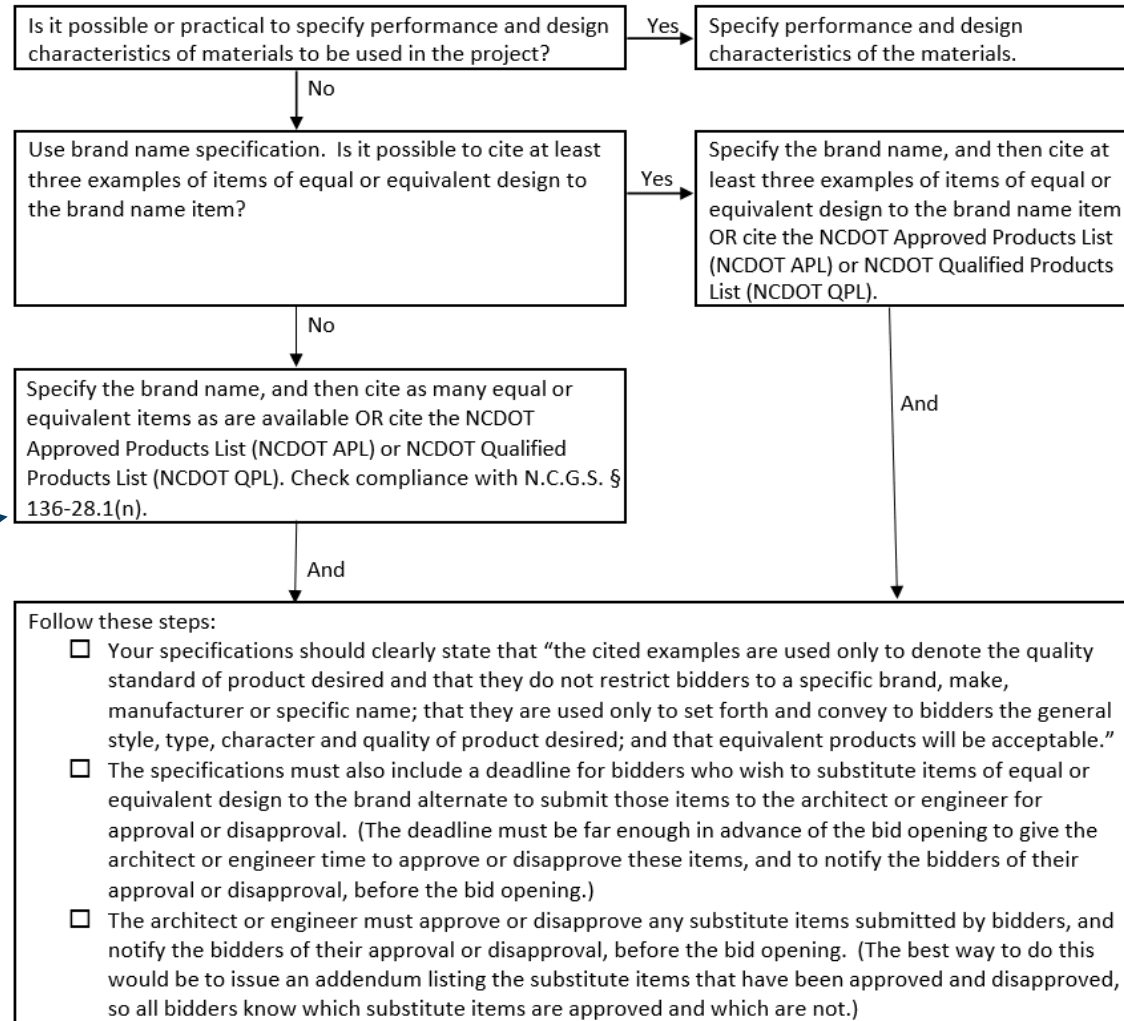
And

[N.C. Gen Stat §136-28.1](#)

as of June 27, 2024

Note: “Check compliance with N.C.G.S. §136-28.1” added.

GS. 133-3 (first part – brand specifications)



Who does this law apply to?

Who does this law apply to?

All architects, engineers, designers, or draftsmen, when providing design services, or writing specifications, directly or indirectly, for materials to be used in any city, county or State work.

These requirements apply to any entity advertising projects through NCDOT, using Federal or State Funds governed by NC General Statute §133-3 and §136-28.1.

As of September 2019, Federal law states see State law for proprietary product direction.

There are no exceptions as a result of the Federal Administrative Code being withdrawn.

**** As of June 27, 2024, State law includes both NC General Statute §133-3 and §136-28.1. For any law change, new law does not grandfather in contracts signed before that date.**

"(n) The Department of Transportation may specify a brand name or specific manufacturer of construction materials in order to promote system compatibility or synchronization; long-term maintenance savings or efficiencies; research, testing, or experimental projects; product evaluation; or when it is impossible or impractical to specify the required performance and design characteristics for such materials."

Supporting Documents

Proprietary Products Guidelines

What does this document contain?

- An overview of the statute governing proprietary products.
- Reason for the statute.
- Defines who the statute applies to (NCDOT Federal and State funded projects – impacting NCDOT, Municipalities and Counties.)
- Provides information about the Product Evaluation Program.
- Recommended procedures for compliance with N.C.G.S. §133-3 and §136-28.1.
- Recommended procedures for advertising open meetings N.C.G.S. §133-3 when not in compliance with N.C.G.S. §136-28.1.
- Provides who has oversight – NCDOT and NC Division of FHWA where NCDOT must document and approve proprietary products and processes.

Proprietary Products Guidelines

Recommended procedures for compliance with N.C.G.S. §133-3 and N.C.G.S. §136-28.1.

The first 4 steps share processes to identify proprietary products and form partnerships to ensure compliance with N.C.G.S. §133-3 and N.C.G.S. §136-28.1.

The Engineer of Record shall partner with the Department of Transportation's Project Manager and any Technical Units to identify any proprietary products and ensure all processes take place according to the following steps, or some agreed upon alternative, to ensure proprietary products compliance with N.C.G.S. §133-3 and N.C.G.S. §136-28.1.

If not, the product will not be included in the let final plans or specifications.

1. For all city, county, state and other public entities whose projects are subject to Article 8 of Chapter 143 of the General Statutes, for all NCDOT funded projects, the Engineer of Record shall prepare specifications in accordance with the latest provisions of [N.C.G.S. § 133-3](#) and [N.C.G.S. § 136-28.1\(n\)](#) which provides for free and open competition on public contracts, while not restricting the use of new and innovative products.
2. The specifications shall contain a performance specification or name at least three brands of equal or equivalent design characteristics. If the Engineer of Record or owner prefers a particular brand of product or material then such brand shall be bid as an alternate to the three items of equal or equivalent design in the base bid, one of which may be the preferred brand.
3. The Engineer of Record's specifications for the preferred brand alternate must also identify the performance standards that support the preference.
4. The Engineer of Record shall confirm electronically to the Department Project Manager and Technical Unit the method to ensure that they are in compliance with [N.C.G.S. § 133-3](#) and [N.C.G.S. § 136-28.1\(n\)](#). If not possible to cite at least three examples of items of equal or equivalent design or cite the NCDOT APL or NCDOT QPL, first use the [Proprietary Approval Form for NCGS 136-28.1](#) to ensure compliance with [N.C.G.S. § 136-28.1\(n\)](#), where if in compliance, the Engineer of Record will maintain all documentation as part of the project file consistent with the public records requirements of the State of North Carolina.

Note: The addition of this N.C.G.S. §136-28.1 in step 1 and 4 and the additional sentence added to step 4. No changes to step 5 or the remainder of the processes for N.C.G.S. §133-3 when not found not to be in compliance with N.C.G.S. §136-28.1.

Proprietary Products Form for N.C.G.S. §136-28.1

If not possible to cite at least three examples of items of equal or equivalent design or cite the NCDOT APL or NCDOT QPL, first use the [Proprietary Approval Form for NCGS 136-28.1](#) to ensure compliance with N.C.G.S. 136-28.1(n), where if in compliance, the Engineer of Record will maintain all documentation as part of the project file consistent with the public records requirements of the State of North Carolina.

Proceed with this [Proprietary Products Form](#) if not in compliance with this form as noted on the checklist. See prior presentation for more information about this [Proprietary Products Form](#).

CHECK ONLY ONE (Requires justification signed by Engineer of Record):

- Promote system compatibility or synchronization
- Long-term maintenance savings or efficiencies
- Research, testing, or experimental projects
- Product evaluation
- Impossible or impractical to specify the required performance and design characteristics for such materials
- None of the above are applicable, stop using this form and go to the [Proprietary Approval Form](#)

Proprietary Products Form for N.C.G.S. §136-28.1

For the [Proprietary Approval Form for NCGS 136-28.1](#) along with identifying if in compliance with one of the items listed in the prior slide there are required fields and signature processes, like the [Proprietary Products Form](#).

Ensure post on the [NCDOT Preconstruction Website](#) and/or include in project file to ensure proper record keeping. Both forms require that step in the process if so utilized.

NAME OF PROPRIETARY ITEM OR PROCESS:

MANUFACTURER NAME, ADDRESS & PHONE NUMBER:

LOCATION OF USE (INCLUDE PROJECT NO. AND COUNTY):

JUSTIFICATION (Justification consists of information that documents the reasons marked above for use of the proprietary item or process. Attach additional pages and documentation as necessary.):

SUPPORTING DOCUMENTS (Include each Document Name with summary of what is included in that document listed):

SIGNATURES: (after signature place on [NCDOT Preconstruction website](#) for the project and/or include in project file)

ENGINEER OF RECORD SIGNATURE:

Name: _____

Title: _____

Signature: _____ Date: _____

STAKEHOLDERS SIGNATURE (if applicable):

Name: _____

Title: _____

Signature: _____ Date: _____

Proprietary Products Policy

Proprietary Products Policy

The Proprietary Products Policy references all supporting documents and G.S. §133-3 and N.C.G.S. §136-28.1.

- This policy is managed by the Materials and Tests Unit Product Evaluation Program, Contract Standards and Technical Units.
- It is applicable to Division of Highway and Multi-Modal Transportation projects.
- This policy connects all supporting documentation on the NCDOT Products website, Project Delivery Network, Proprietary Products Website and G.S. §133-3 and N.C.G.S. §136-28.1.



PROPRIETARY PRODUCTS

NCDOT POLICY
F.25.0101

Business Category: Division of Highways (DOH), Multi-Modal Transportation		Business Area: Materials and Tests Unit Product Evaluation Program, Contract Standards and Technical Units
Approval Date: 6/27/2024	Last Revision Date: 8/5/2022	Next Review Date: 6/27/2026
Authority: N.C. Gen Stat §133-3. Specifications to carry competitive items; substitution of materials. N.C. Gen Stat §136-28.1. Letting of contracts to bidders after advertisement; exceptions.		Select all that apply: <input checked="" type="checkbox"/> N/A <input type="checkbox"/> Requires Board approval <small>Click to type Board name.</small> <input type="checkbox"/> Requires Federal Highways Administration (FHWA) approval <input type="checkbox"/> Requires other external agency approval: <small>Click here to enter external agency name(s).</small>
Definitions: "Engineer of Record" – shall mean the person who is sealing the plans or proposal specifying proprietary products. "NCDOT" – shall mean the North Carolina Department of Transportation. "Project Manager" – shall mean the person from NCDOT who is in overall charge of the planning and execution of a particular project where a specified proprietary product is proposed by the Engineer of Record. "Technical Unit Representatives" – shall mean the person(s) from a NCDOT Unit whose technical discipline is applicable to the specified proprietary product proposed by the Engineer of Record.		
Policy: It is the policy of the North Carolina Department of Transportation (NCDOT) that all project products funded by state or federal dollars must follow the procedures as outlined in the Proprietary Products Guidelines and procedures referenced in the NCDOT Project Delivery Network adhering to N.C. Gen Stat §133-3 and N.C. Gen Stat §136-28.1(n) .		
Scope: This policy applies to all Engineers of Record, Project Managers and Technical Unit representatives for a state or federally funded project.		
Procedures: Procedures may be found by accessing the following link to Proprietary Products Guidelines and NCDOT Project Delivery Network .		
Related Documents: Proprietary Products Guidelines Products page of the Connect NCDOT website.		

Proprietary Products Roles and Responsibilities

Roles and Responsibilities

Engineer of Record

- Responsible to adhering to N.C.G.S. § 133-3 and § 136-28.1 regarding Proprietary Products Policy/Process; leads process for compliance.
- In contact with *Project Manager* on Proprietary Products as soon as identified.
- Non-compliance implications if not followed – loss of license and fines.

“Engineer of Record” – shall mean the person who is sealing the plans or proposal specifying proprietary products.

Proprietary Products Conclusions

Products Project Conclusions

It is critical for Proprietary Products that we comply for all State and Federal funded projects with G.S. § 133-3 and § 136-28.1

There are multiple avenues to ensure you follow this statute to include Proprietary Products policy, Products website with supporting Proprietary Products documents and website resources, within Project Delivery references and Quality Control and Assurance checklists at the unit level to ensure this is not missed.

If you are not in compliance with the General Statute, the product will not be included in the let final plans or specifications.

Like other non-compliance when an Engineer of Record seals plans, there are loss of professional engineering license and fines that could occur as well. The Engineer of Record is ultimately responsible for compliance.

Products Project Conclusions

You can find the documents discussed in this presentation on the NCDOT Products website at <https://connect.ncdot.gov/resources/Products/Pages/default.aspx>

Proprietary Product Information

NCDOT Proprietary Products Policy

NCDOT Proprietary Products Policy



Proprietary Product Guidelines

Engineers have an inherent duty to use generic products. If proprietary products must be used, please review these guidelines.



Proprietary Approval Form for NCGS 136-28.1

NCDOT Proprietary Item Form for NCGS 136-28.1: Certifications



Proprietary Approval Form

NCDOT Proprietary Item Form: Certifications or Finding in the Public Interest



Thank you!
