



NORTH CAROLINA
Department of Transportation

Proprietary Products Lunch and Learn

October 24, 2022

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 Presenters

Materials and Tests Unit – Steven Bolyard

Contract Standards and Development – Lisa Penny

Technical Units – Questions & Answers support

- ITS & Signals Management – Matt Carlisle, Zack Little
- Geotechnical Unit – John Pilipchuk
- Hydraulics Unit – Andy McDaniel
- Lighting and Electrical/Roadway Design Unit – Greg Hall
- Pavement Design/Materials and Tests Unit – Clark Morrison
- Public Involvement, Community Studies & Visualization – Jammille Robbins
- Roadside Environmental Unit – Jeremy Goodwin & Jeff Walston
- Signing and Delineation – Matt Springer
- Structures – Gichuru Muchane
- Utilities – Bo Hemphill

Proprietary Product Lunch and Learn Agenda

Proprietary Product Definition

Proprietary Product Law

Supporting Documents

Proprietary Products Website

Proprietary Products Policy

Project Delivery Integration

Proprietary Product Roles and Responsibilities

Concluding Thoughts

What is a Proprietary Product?

What is a Proprietary Product?

A proprietary product is one where the material or technology used to make it is owned exclusively by a single company.

The N.C. Department of Transportation relies on General Statute §133-3 which states that the engineer shall specify in plans and/or specifications the required performance and design characteristics of the materials being used on government contracts.

If a brand name (proprietary product) is used, then three or more examples of items of equal design or equivalent design must be cited.

The purpose of this statute is to mandate and encourage free and open competition on public contracts.

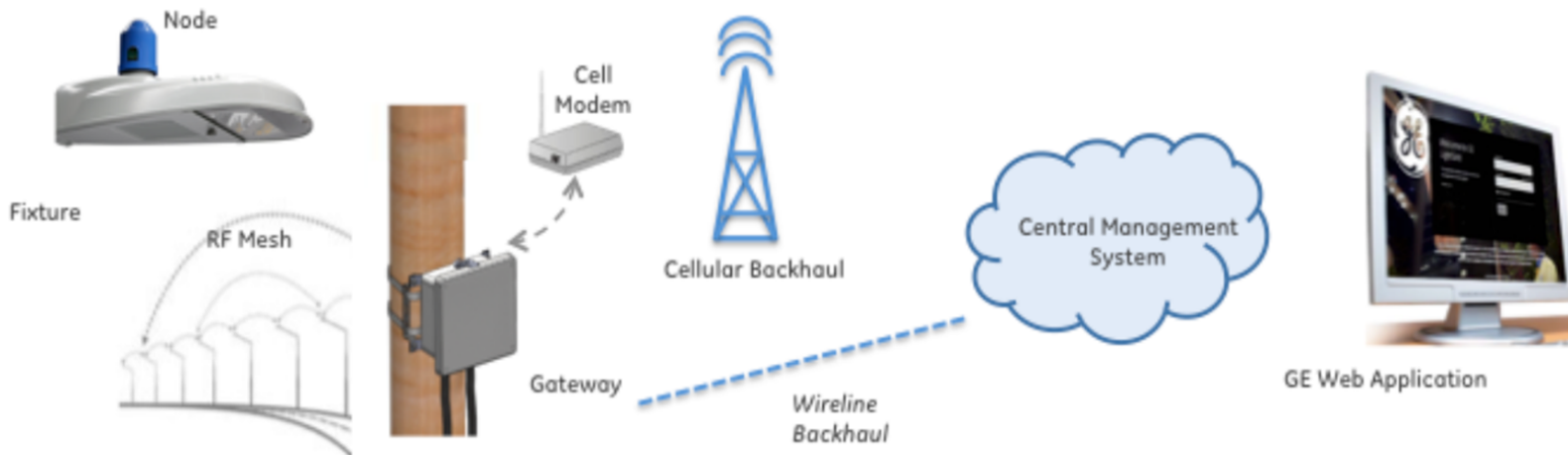
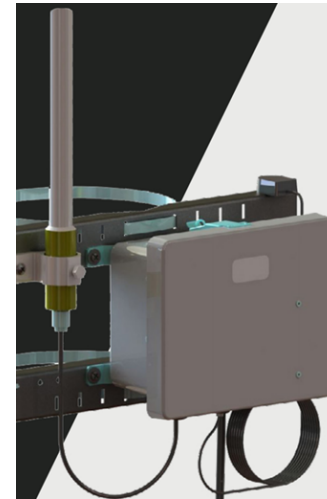
What is a Proprietary Product?

Hydraulics Examples) Filterra® by Contech, Tideflex® Check Valves



What is a Proprietary Product?

Lighting and Electrical
Example) LightGrid



What is a Proprietary Product?

Transit Systems Example)

BraunAbility

Wheelchair Lift Guard Barriers



The Millennium 2 Series also features new and improved inboard barriers, baseplates, vertical channels, and lower parallel arms for a more rigid and stable ride.

What is a Proprietary Product?

Utility Example)

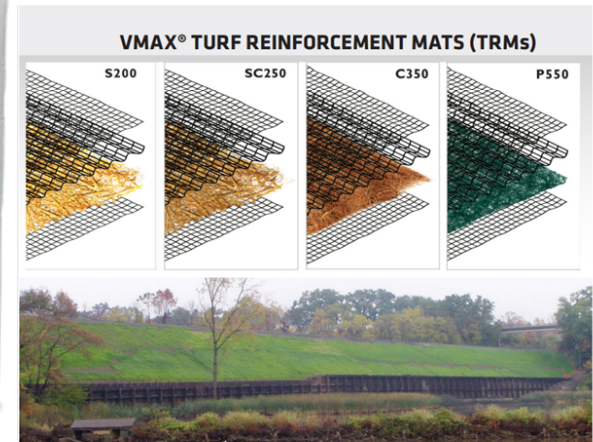
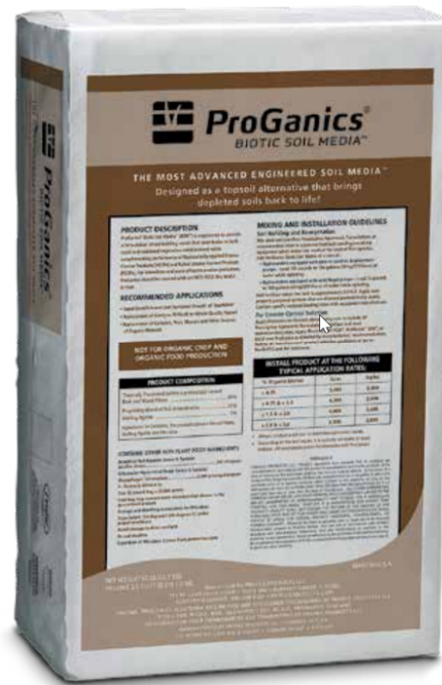
Megalug, which is a brand of joint restraint



What is a Proprietary Product?

Roadside
Environmental
Example)
Erosion Control
products

DIRTBAG®

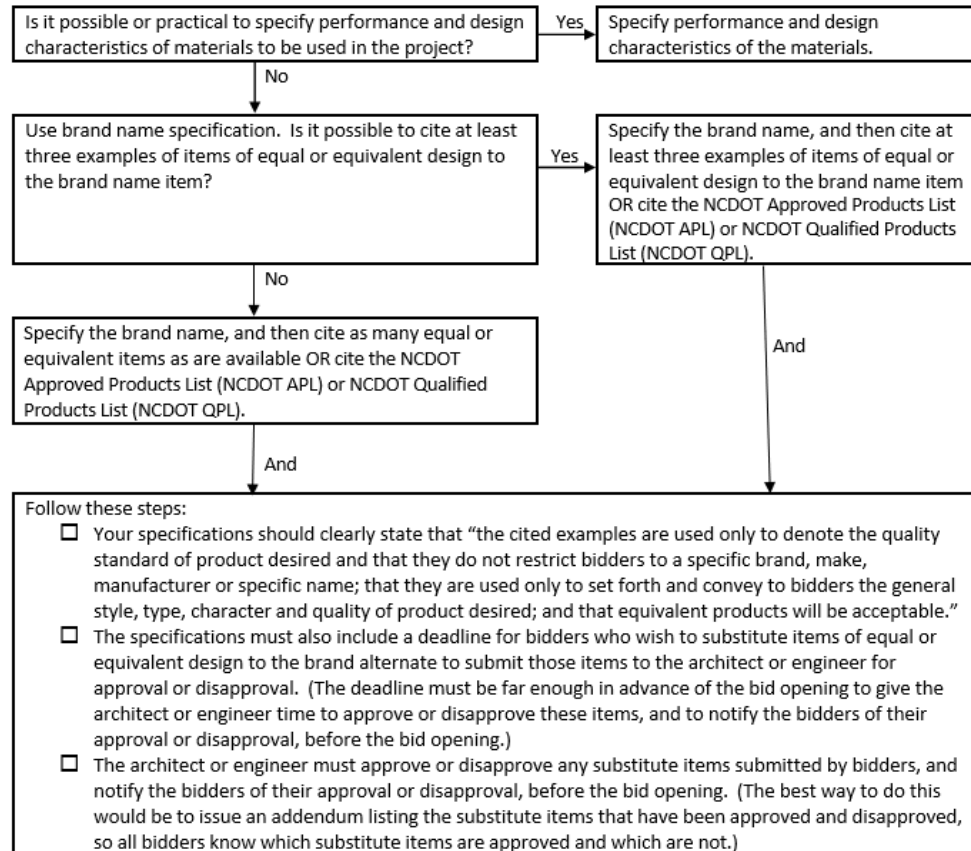


Proprietary Product Law

Proprietary Product Law

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

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



What is a Proprietary Product?

Geotechnical Unit Example) Type 1 Wire Mesh, when generally cite NCDOT Approved Products List (APL) - would fulfill the Proprietary Product requirement <https://apps.ncdot.gov/vendor/approvedproducts/>

Approved Products List

Product ID (ex. NPYX-xxxx):

Company Name:

Product Name:

Product Group: ▼



Product ID	Plant ID	Company Name	Product Group	Product Category	Product Name	Model Number	Product Status
NP12-6081		Maccaferri, Inc.	Wire Mesh & Nets (SP-GEO)	Type 1 Wire Mesh	Double-Twisted Hexagonal Mesh (8x10)	DTMESH 8X10 GALV	Approved
NP12-6080		Geobrugg North America	Wire Mesh & Nets (SP-GEO)	Type 1 Wire Mesh	Deltax Mesh G80 2		Approved



Product ID	Plant ID	Company Name	Description
NP12-6081		Maccaferri, Inc.	Type 1 Wire Mesh; 8 x 10 mesh type. Double twisted hexagonal wire mesh is manufactured as per ASTM A975 & is constructed of a 3.mm heavily Galvalume coated wires, woven together to form a uniform mesh which resists unraveling even after wires are cut/damaged.
NP12-6080		Geobrugg North America	High tensile steel mesh system for retaining of unstable slopes.

What is a Proprietary Product?

Signals and ITS Unit Example) Wood Poles, when generally cite NCDOT Qualified Products List (QPL)

<https://apps.ncdot.gov/products/qpl/>

<https://connect.ncdot.gov/resources/safety/Pages/ITS-and-Signals-Qualified-Products.aspx>

9		SECTION 1720	
10		WOOD POLES	
11	1720-1 DESCRIPTION		
12	Furnish and install poles, grounding systems and all necessary hardware.		
13	1720-2 MATERIAL		
14	Refer to Division 10.		
	Item		Section
	Grounding Electrodes		1091-6
	Inspection Requirements		1082
	Wire		1091-2
	Wood Poles		1082

Section 1721

- 1 Furnish material, equipment and hardware under this section that is pre-approved on the
- 2 ITS and Signals QPL for wood poles available on the Department's website.

Search the Online QPL Database (Last Updated - 9/6/2022)				
Year: 2018				
Group: (All Groups)				
Manufacturer: (All Manufacturers)				
Approved Applications: 1720 - Wood Poles				
Search				
2018 PRODUCTS MEETING YOUR SEARCH CRITERIA				
Group	Construction Item No And Description	Manufacturer Product No Assigned By DOT	Manufacturer	
<input type="checkbox"/>	PLH PW40FTCL3-2018-1082 Poles, Wood 40 Ft. Class 3 Treated with Pentachlorophenol per spec or CCA (Chromated Copper Arsenate) to AWPA Standard C-4	ACEPW40FTCL3	Ace Pole Co.	
<input type="checkbox"/>	PLH PW40FTCL3-2018-1082 Poles, Wood 40 Ft. Class 3 Treated with Pentachlorophenol per spec or CCA (Chromated Copper Arsenate) to AWPA Standard C-4	ATLPW40FTCL3	Atlantic Wood Industries/Cox Industries	
<input type="checkbox"/>	PLH PW40FTCL3-2018-1082 Poles, Wood 40 Ft. Class 3 Treated with Pentachlorophenol per spec or CCA (Chromated Copper Arsenate) to AWPA Standard C-4	CARPW40FTCL3	Carolina Pole/Cox Industries	
<input type="checkbox"/>	PLH PW40FTCL3-2018-1082 Poles, Wood 40 Ft. Class 3 Treated with Pentachlorophenol per spec or CCA (Chromated Copper Arsenate) to AWPA Standard C-4	DURPW40FTCL3	Durable Wood Preservers, Inc.	
<input type="checkbox"/>	PLH PW40FTCL3-2018-1082 Poles, Wood 40 Ft. Class 3 Treated with Pentachlorophenol per spec or CCA (Chromated Copper Arsenate) to AWPA Standard C-4	GSPPW40FTCL3	Gulf South Forrest Products	
<input type="checkbox"/>	PLH PW40FTCL3-2018-1082 Poles, Wood 40 Ft. Class 3 Treated with Pentachlorophenol per spec or CCA (Chromated Copper Arsenate) to AWPA Standard C-4	KOPPW40FTCL3	Koppers Industries, Inc.	
<input type="checkbox"/>	PLH PW40FTCL3-2018-1082 Poles, Wood 40 Ft. Class 3 Treated with Pentachlorophenol per spec or CCA (Chromated Copper Arsenate) to AWPA Standard C-4	MCFPW40FTCL3	McFarland Cascade	
<input type="checkbox"/>	PLH PW40FTCL3-2018-1082 Poles, Wood 40 Ft. Class 3 Treated with Pentachlorophenol per spec or CCA (Chromated Copper Arsenate) to AWPA Standard C-4	WILPW40FTCL3	William C. Meredith Co., Inc	
<input type="checkbox"/>	PLH SB8STR4SOLC-2018-1098-6 Split Bolt for #8 Stranded to #4 Solid Copper	BURSB8STR4SOLC-1	Burndy/FCI Electrical	
<input type="checkbox"/>	PLH SB8STR4SOLC-2018-1098-6 Split Bolt for #8 Stranded to #4 Solid Copper	BURSB8STR4SOLC-2	Burndy/FCI Electrical	
<input type="checkbox"/>	PLH SHDG1/2-2018 Staple, Hot Dip Galvanized 1/2" inside diameter	JOSSHDG1/2	Joslyn/MacLean Power Systems	
<input type="checkbox"/>	PLH SHDG1/4-2018 Staple, Hot Dip Galvanized 1/4" inside diameter	CHASHDG1/4	Chance/Hubbell Power Systems, Inc	

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.

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.

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 G.S. §133-3.
- Recommended procedures for advertising open meetings.
- Provides who has oversight – NCDOT and NC Division of FHWA where NCDOT must document and approve proprietary products and processes.

Proprietary Products Guidelines

Definitions of Terms:

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

Product Evaluation Program

- This program evaluates products submitted for placement on the approved products list <https://apps.ncdot.gov/vendor/approvedproducts/>
- This program allows for public website viewing and instructions for how to submit to be considered for the approved products list.
- Products are updated daily.
- The program goes through an annual recertification to verify the manufacturers and product availability.
- If your specification sources the approved products list, you are in compliance with G.S. §133-3.

The image shows two screenshots of a web application. The top screenshot is titled "Approved Products List" and contains a search form with the following fields: Product ID (ex. NPYX-xxxx), Company Name, Product Name, Product Group (dropdown), Product Category (dropdown), and Product Status (dropdown). There are "Search" and "Reset" buttons at the bottom right. The bottom screenshot is titled "Business » Producer / Supplier" and contains a search form with the following fields: Producer Supplier Name, Facility Type (dropdown), and Plant ID: (i.e. FA338). There are "Search" and "Reset" buttons at the bottom right. To the left of the bottom screenshot is a vertical navigation menu titled "Approved Resources" with the following items: Product Listing, Seeds, Producer/Supplier, Technician Certification, Minimum Sampling Guide, and Alternate ID Lookup.

Proprietary Products Guidelines

Recommended procedures for compliance with G.S. §133-3

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

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 G.S. §133-3

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 [GS 133-3](#) which provides for free and open competition on public contracts.
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 [GS 133-3](#).

Proprietary Products Guidelines

Recommended procedures for compliance with G.S. §133-3

Step 5 and its sub-steps are dedicated to the steps when proprietary products are identified, it references a form and website to utilize in the process to ensure in compliance with G.S. §133-3.

The Engineer of Record shall:

- Use the Proprietary Approval Form provided as well as supply supporting documentation on the product(s) proposed.
- Hold a virtual open meeting with interested stakeholders.
- Ensure advertisement of this meeting is conducted, supporting information from interested parties are archived for reference, all review and conclusions are well documented using the form.

5. Unless a different method was approved in the prior step, the Engineer of Record shall use the following steps to comply with [GS 133-3](#).
 - a. The Engineer of Record shall complete and obtain approval using the [Proprietary Approval Form](#) to document the requirements.
 - b. The Engineer of Record shall post a *virtual open meeting* notice on the NCDOT public facing website as described in the following pages. The [Proprietary Approval Form](#) and supporting documents shall be posted on the "[Proprietary Products](#)" website on connect.ncdot.gov for presentation of the performance standards for the project(s) where the proprietary product is being proposed for. The notice shall be published no later than 7 days prior to the meeting. Access to the virtual meeting link, date and time will be found on the [Proprietary Approval Form](#) and NCDOT public facing website. The notice shall include a listing of the preferred item(s) to be presented if applicable.
 - c. The *virtual open meeting* may be held separately or in conjunction with the project pre-bid meeting.
 - d. The Engineer of Record and any stakeholders will conduct the meeting. The Engineer of Record will present information to the interested stakeholders in support of the preferred product alternate(s) and include written documentation using the [Proprietary Approval Form](#). The Engineer of Record should allow time at the meeting for input from interested stakeholders and those who have requested in advance to comment on the preferred alternate(s). The Engineer of Record may consider comments at the meeting and/or written comments or documents provided in advance in approving or disapproving the preferred brand alternate(s).
 - e. Where alternates are approved at the meeting, the Engineer of Record shall provide justification in a written statement made available to the public using the [Proprietary Approval Form](#) including the criteria used to support the approval. [GS 133-3](#) lists the only criteria as *cost savings* **or** *to maintain or improve the function of any process or system affected by the preferred product* **or** both using the [Proprietary Approval Form](#) to document. The justification documented within the [Proprietary Approval Form](#) and all supporting documents shall be published on the public facing "[Proprietary Products](#)" website on connect.ncdot.gov for the project(s) where the proprietary product is being proposed for.
 - f. 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.

Proprietary Products Guidelines

Recommended procedures for compliance with G.S. §133-3

Advertising the virtual open meeting.

The Engineer of Record shall:

- Use the template provided in this guidelines document to populate the project specific and proprietary product(s) information.
- If there is more than one project you are working on that requires this proprietary product G.S. §133-3 compliance, you can advertise the virtual open meeting for proprietary product considerations on multiple projects.
- The instructions provide who to send the documentation to for posting on the NCDOT Public Event website on <https://www.ncdot.gov/news/events/Pages/default.aspx>
- This template is also on the Proprietary Products website.

Proprietary Products Lunch and Learn

NCDOT NOTICE TO INTERESTED PARTIES - VIRTUAL OPEN MEETING ON PROPRIETARY PRODUCTS FOR [PROJECT DESCRIPTION/PURPOSE]

STIP Project No. X-XXXX, Contract Number CXXXXXX

The purpose of this meeting is to communicate the performance standards for the preferred product(s) and solicit alternatives from manufacturers that the Engineer will consider for approval on this project. The Engineer will give a presentation of the preferred product(s) during the virtual open meeting. Any additional product alternates, submitted prior to the meeting or during the meeting will be discussed by the manufacturer at this meeting.

Municipality/County – This open meeting is for any interested stakeholders to participate in a live virtual open meeting on DATE from TIME to learn more about the performance standards for alternates for the preferred product(s) for PROJECT DESCRIPTION/PURPOSE.

In accordance with GS 133-3, the following preferred product(s) is/are being considered for the project:

PRODUCT A as manufactured by MANUFACTURER A and PRODUCT B as manufactured by MANUFACTURER B. PRODUCT A as manufactured by MANUFACTURER A and MANUFACTURER B.

Documents related to this product will be open for inspection at the following location: WEBSITE or contacting ENGINEER OF RECORD NAME at ###-###-#### or EMAIL.

Anyone interested may sign up for the virtual open meeting by going to WEBSITE to review the preferred product(s), and anyone interested in learning about this product/these products or have an alternate option please click on the registration link below.

REGISTER NOW

The audience may submit questions via a chat box or EMAIL.

If you are a manufacturer interested in being considered for PRODUCT A, please fill out this form at this LINK and submit to ENGINEER OF RECORD NAME at EMAIL no less than 2 business days prior to the virtual open meeting on DATE and TIME.

If you are a manufacturer interested in being considered for PRODUCT B, please fill out this form at this LINK and submit to ENGINEER OF RECORD NAME at EMAIL no less than 2 business days prior to the virtual open meeting on DATE and TIME.

Proprietary Products Form

This [Proprietary Products Form](#) is used to document the information in preparation for the public interest meeting and meeting results.

It is separated into sections to include.

- Before Public Meeting (Information about Proprietary Product(s) to include manufacturer information, location of use, justification, supporting documents, contact information and meeting details to include date/time/virtual meeting link)

BEFORE PUBLIC MEETING:

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):

CONTACT INFORMATION (include Engineer of Record and Stakeholder(s) (if applicable), listing organization, name, address, phone number, and email address):

ENGINEER OF RECORD:

OTHER STAKEHOLDER(S):

PUBLIC MEETING DETAILS (include Date, Time, and Virtual Meeting Link):

Date:	
Time:	
Virtual Meeting Link:	

Please submit any alternatives to the Engineer of Record prior to the public meeting, using the next page of this document.

Proprietary Products Form

This [Proprietary Products Form](#) is used to document the information in preparation for the public interest meeting and meeting results.

It is separated into sections to include.

- During Public Meeting & Alternative Submittal Prior to Public Meeting (Manufacturer information, justification, supporting documents)

DURING PUBLIC MEETING & ALTERNATIVE SUBMITTAL PRIOR TO PUBLIC MEETING:

MANUFACTURER NAME, ADDRESS & PHONE NUMBER, PRODUCT DISCUSSED:

PRODUCT DISCUSSED 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 for each product discussed each Document Name with summary of what is included in that document listed, i.e., data to support justification):

Proprietary Products Form

This [Proprietary Products Form](#) is used to document the information in preparation for the public interest meeting and meeting results. It is separated into sections to include.

- During Public Meeting (Attendance, manufacturer information, justification if any approved at the meeting)

DURING PUBLIC MEETING:

ATTENDANCE AT PUBLIC MEETING (Include Name, Representing Organization, Contact information (Email/Phone Number)):

MANUFACTURER NAME, ADDRESS & PHONE NUMBER, PRODUCT APPROVED AT MEETING (if applicable):

JUSTIFICATION FOR PRODUCT APPROVED AT MEETING (if applicable):

Proprietary Products Form

This [Proprietary Products Form](#) is used to document the information in preparation for the public interest meeting and meeting results. It is separated into sections to include.

- After Public Meeting (Manufacturer & Approval or Disapproval Justification)

Proprietary Products Lunch and Learn

AFTER PUBLIC MEETING:

MANUFACTURER NAME, ADDRESS & PHONE NUMBER, PRODUCT APPROVED:

JUSTIFICATION FOR PRODUCT APPROVED:

MANUFACTURER NAME, ADDRESS & PHONE NUMBER, PRODUCT DISAPPROVED:

JUSTIFICATION FOR PRODUCT DISAPPROVED:

Proprietary Products Form

This [Proprietary Products Form](#) is used to document the information in preparation for the public interest meeting and meeting results.

It is separated into sections to include.

- Signatures (Engineer of Record & Stakeholders if applicable)
DocuSign signature is acceptable

SIGNATURES:

ENGINEER OF RECORD SIGNATURE:

Name: _____

Title: _____

Signature: _____ Date: _____

STAKEHOLDERS SIGNATURE (if applicable):

Name: _____

Title: _____

Signature: _____ Date: _____

Proprietary Products Website

Proprietary Products Website

The Proprietary Products Website is used to document NCDOT funded proprietary product public interest meetings and meeting results.

- There is a template file that can be replicated for your specific project(s).
- This site will be NCDOT managed for posting, there are unit representatives that are allowed to post to this site.
- If you need access, a request can be sent to the Product Evaluation Program Team at productevaluation@ncdot.gov

Products ▸ Proprietary Products

🏠 ▶ Connect NCDOT ▶ Resources ▶ Products

✓ <input type="checkbox"/> Name	Product	Contract Number	TIP
<input type="checkbox"/> TIP X-XXXX Contract CXXXXXX	...		

Proprietary Products Website

The Proprietary Products Website is used to document NCDOT funded proprietary product public interest meetings and meeting results. At the TIP(s)/Contract(s) level...

- You can document multiple or a single proprietary product you are looking to evaluate for that project or projects.
- If evaluating multiple products at one meeting session, there are templates for the Proprietary Product Form and Webpage Notice to Interested Stakeholders at this level.

Products ▸ Proprietary Products ▸ TIP X-XXXX Contract CXXXXXX

The screenshot shows the website interface with a breadcrumb trail: [Connect NCDOT](#) ▸ [Resources](#) ▸ [Products](#). On the left is a navigation sidebar with a tree view: **Proprietary Products** (expanded) ▸ **Folders** (expanded) ▸ **TIP X-XXXX Contract** (expanded) ▸ **Product A** ▸ **Product B** ▸ **Content Type**. The main content area displays a table with the following data:

Name	Product	Contract Number	TIP
Product A	...		
Product B	...		
Proprietary Approval Form_Manufacturer TBD_Product TBD	...		
Webpage Notice to Interested Stakeholders regarding Proprietary Product A and B	... A and B	CXXXXXX	X-XXXX

Proprietary Products Website

The Proprietary Products Website is used to document NCDOT funded proprietary product public interest meetings and meeting results. At the Product Level...

- The Engineer of Record shall include Manufacturers identified prior to the virtual open meeting prior to advertising and Manufacturers supplied information prior to and during the open meeting.
- There is the Proprietary Approval Form for specific manufacturers to submit prior to the virtual open meeting for that specific product.
- If evaluating a single product at one meeting session, there are templates for the Proprietary Product Form and Webpage Notice to Interested Stakeholders at this level.

Products ▸ TIP X-XXXX Contract CXXXXXX ▸ Product A

The screenshot shows a web interface with a breadcrumb trail: [Connect NCDOT](#) ▸ [Resources](#) ▸ [Products](#). On the left is a navigation tree under 'Proprietary Products' with folders for 'TIP X-XXXX Contract CXXXXXX', 'Product A', 'Product B', and 'Content Type'. The main area displays a table of documents:

Name	Product	Contract Number	TIP
Manufacturer A	...		
Manufacturer B	...		
Proprietary Approval Form_Manufacturer TBD_Product A_SubmitPriorToMtgForm	...		
Proprietary Approval Form_TIP X-XXXX Contract CXXXXXX Product A	... A	CXXXXXX	X-XXXX
Webpage Notice to Interested Stakeholders regarding Proprietary Product A	... A	CXXXXXX	X-XXXX

Proprietary Products Website

The Proprietary Products Website is used to document NCDOT funded proprietary product public interest meetings and meeting results. At the Manufacturer Level...

- There is the submitted Proprietary Approval Form for just the specific manufacturers either prior to or during the virtual open meeting.
- There shall be a supporting documentation for the manufacturer for that product as well.

Products › Product A › Manufacturer A

The screenshot shows the website interface for 'Proprietary Products'. The breadcrumb trail is 'Connect NCDOT › Resources › Products'. The left sidebar shows a folder structure: 'Proprietary Products' containing 'Folders', 'TIP X-XXXX Contract CXXXXXX', 'Product A', 'Product B', and 'Content Type'. Under 'Product A', there are sub-folders for 'Manufacturer A' and 'Manufacturer B'. The main content area has a search bar 'Find a file' and a table with the following data:

Name	Product	Contract Number	TIP	Manufacturer	Usage Approval	
Proprietary Approval Form_Manufacturer A_Product A	...	A	CXXXXXX	X-XXXX	A	Approved
Supporting Information_Manufacturer A_Product A	...	A	CXXXXXX	X-XXXX	A	Approved

Proprietary Products Policy

Proprietary Products Policy

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

- 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.



PROPRIETARY PRODUCTS

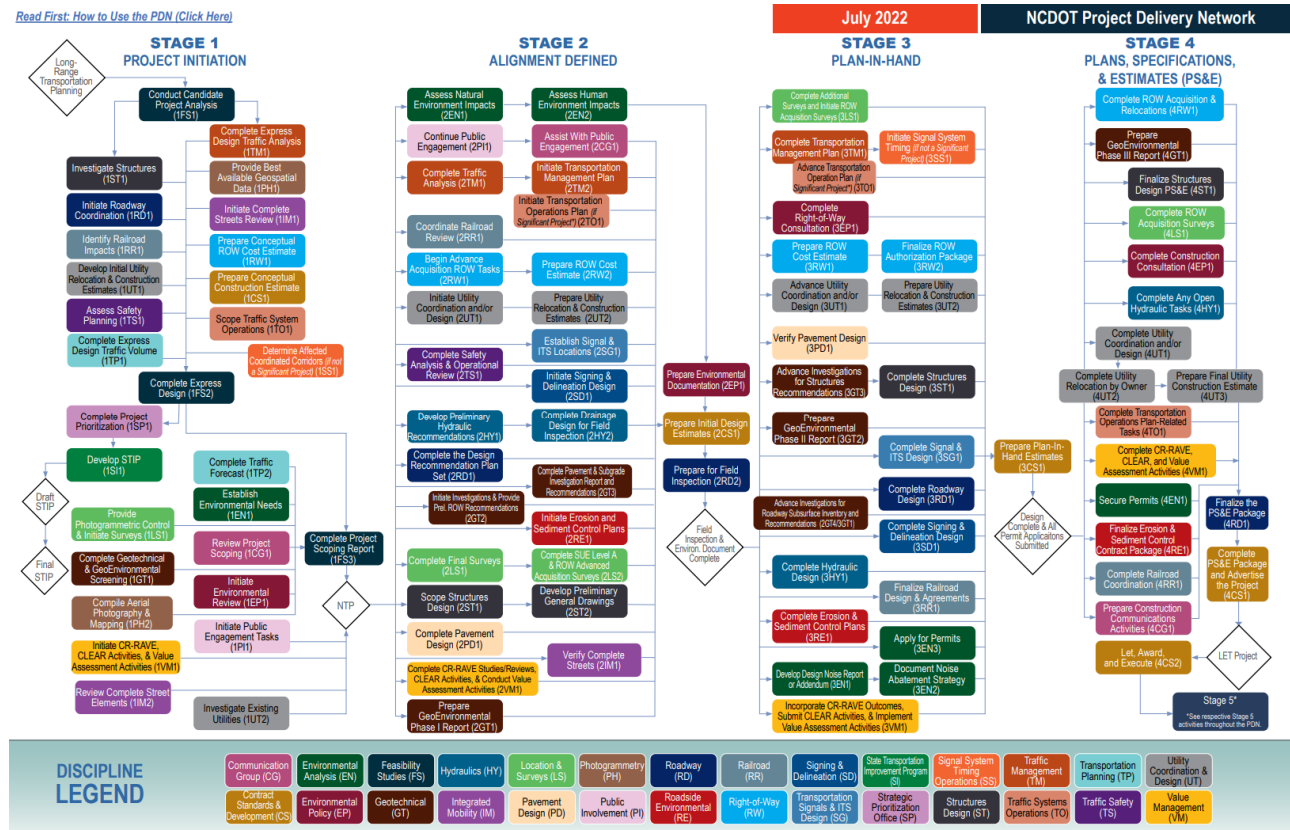
NCDOT Policy
F.25.0101

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: 8/5/2022	Last Revision Date: N/A	Next Review Date: 8/5/2024
Authority: N.C. Gen Stat §133-3. Specifications to carry competitive items; substitution of materials.		Select all that apply: <input checked="" type="checkbox"/> N/A <input type="checkbox"/> Requires Board approval <input type="checkbox"/> Requires Federal Highways Administration (FHWA) approval <input type="checkbox"/> Requires other external agency approval: Click here to enter external agency name(s).
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 .		
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 Project Delivery Integration

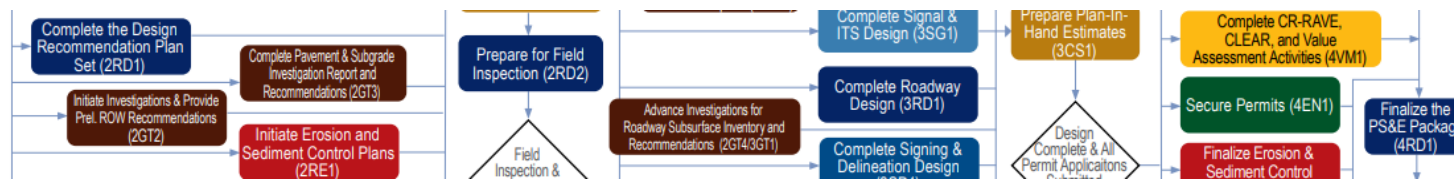
Proprietary Products Project Delivery Integration

You will find references to the where these supporting documents can be found throughout the Project Delivery process https://connect.ncdot.gov/projects/Project-Management/Documents/NCDOT_ProjectDeliveryNetwork.pdf



Proprietary Products Project Delivery Integration

For example, Roadway Design has reference to the Roadway Design Manual in 2RD1, 2RD2, 3RD1, 4RD1 which has Proprietary Products instructions in Chapter 5 (5.3.5).



2RD1 Complete the Design Recommendation Plan Set

Overview

Complete the project's Design Recommendation Plan Set and associated roadway tasks to establish the essential roadway design elements that facilitate multiple activities across multiple disciplines early in this stage. This activity provides needed data that is incorporated into the environmental document, serves as a visual aid during public engagement activities, and sets a foundation for coordination activities with other technical disciplines/Units, so that the technical leads can develop and advance their design recommendations and plans early.

References

- American Association of State Highway Transportation Officials (AASHTO) *A Policy on Geometric Design of Highways and Streets and Errata*
- American Association of State Highway Transportation Officials (AASHTO) *Roadside Design Guide 4th Edition and Errata*
- [Roadway Design Manual](#)
- [Roadway Standard Specifications](#)

5.3.5 Proprietary Products

To encourage competition in the project letting process, general statutes have been developed to mandate and encourage free and open competition on public contracts. Refer to the [NCDOT Proprietary Product Guidelines](#) found on the Products page of the Connect NCDOT website for detailed guidance on the state and federal requirements when specifying proprietary items into a contract. These procedures state the engineer has an inherent duty to use generic products instead of simply specifying proprietary products in contract documents. Proprietary products can be defined as a manufactured component or product sold under a brand name owned by an individual or company, rather than a generic name. Proprietary products are typically protected by patents or trademarks. Approval is required prior to letting when specifying a proprietary product in the contract.

Conflicts with the use of proprietary items will often arise when developing SPs and PSPs. To ensure the contract meets all state and federal requirements, it is important the engineer include at least two similar proprietary products or items as alternatives in the contract. Take care in writing restrictive specifications into PSPs that limit the number of products or only allow one product to be used.

Proprietary Products Project Delivery Integration

There are also unit level Quality Control and Quality Assurance checklists which state the following:

QC language:

The Engineer of Record has complied with NCGS § 133-3 and NCDOT policy number F.25.0101 regarding the use of proprietary products. [The standard responses would apply: Yes/No/NA]

QA language:

The QC checklist confirms whether the Engineer of Record has complied with NCGS § 133-3 and NCDOT policy number F.25.0101 or indicates that these requirements are not applicable. [Basically, this QA items verifies that the engineer did not leave blank all three check boxes for the associated QC item]

Proprietary Products Roles and Responsibilities

Roles and Responsibilities

Engineer of Record

- Responsible to adhering to G.S. 133-3 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.

Roles and Responsibilities

Project Manager

- QA/QC compliance validation. Ensure the *Engineer of Record* is completing the actions related to this general statute by their submittal of QA/QC checklists, plan and provision review for proprietary product compliance, and will be responsible to ensure the *Engineer of Record* has acknowledged that they have conformed to the Proprietary Product Policy/Process.
- Involves appropriate *Technical Units* in any proprietary product identified.
- Works with the *Engineer of Record* on any discovered proprietary products in plans or provisions not addressed through the Proprietary Product Policy/Process for removal or other decision making.
- Supports with posting project specific content on the NCDOT Proprietary Products website provided by the *Engineer of Record*. Email the PEP Team / Service Account (productevaluation@ncdot.gov) for access.
- Answers any questions the *Engineer of Record* has about the Proprietary Products Policy/Process.

“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.

Roles and Responsibilities

Technical Units

- QA/QC compliance validation at the unit level. Ensure the *Engineer of Record* is completing the actions related to this general statute by their submittal of QA/QC checklists, plan and provision review for proprietary compliance, and will be responsible to ensure the *Engineer of Record* has acknowledged that they have conformed to the Proprietary Product policy/process at the Unit level.
- Each NCDOT Unit will be responsible for participating in the proprietary products identified in collaboration with the *Project Manager*.
- Supports with posting unit related project specific content on the NCDOT Proprietary Products website provided by the *Project Manager/Engineer of Record*. Email the PEP Team / Service Account (productevaluation@ncdot.gov) for access.
- Answers any questions the *Project Manager* or *Engineer of Record* has about the Proprietary Products Policy/Process related to the unit.

“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.

Roles and Responsibilities

Contract Standards and Development & Other Contracts and Proposals Engineers

- QC the process for contracts.
- Alerts the *Project Manager* who works with the *Engineer of Record* to remove Proprietary Products from the plans or proposals that are not in compliance with the Proprietary Product policy/process or alternate solution.

Roles and Responsibilities

Materials and Tests/Product Evaluation Team

- Receives Proprietary Product site access request via an email from the PEP Team / Service Account (productevaluation@ncdot.gov).
- When internal stakeholder, *Project Managers* or *Technical Units*, requests access to the Proprietary Products SharePoint Site they will review the request and work with IT to grant permission appropriately.

Professional Services Contracts

- Ensures contract language has been sufficiently added to contracts for the *Engineer of Record* to confirm compliance with all laws, including GS 133-3 (and hence the Proprietary Products Policy/Process)

Roles and Responsibilities

Contract Standards and Development / Proposals and Specifications Management & Materials and Tests / Product Evaluation Team

- When additional Proprietary Product Policy/Process updates are needed in the future these groups will organize and participate in the update meetings. They will work with *Project Managers* and *Technical Units* for any update requirements.
- They will work with *Project Managers* and *Technical Units* as needed to answer questions they may have about the Proprietary Product Policy/Process.
- Supports Proprietary Product Policy/Process training.

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

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 today on the NCDOT Products website at <https://connect.ncdot.gov/resources/Products/Pages/default.aspx>

Proprietary Product Information

Proprietary Products

NCDOT proprietary products public interest meetings and meeting results.



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

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



State Proprietary Product Law

NCGS 133-3



NCDOT Proprietary Products Policy

NCDOT Proprietary Products Policy



Contact Us

Steven Bolyard

sjboyard@ncdot.gov

919-329-4061

productevaluation@ncdot.gov

Lisa Penny

lepenny@ncdot.gov

919-707-6916

specs@ncdot.gov




 @NCDOT

 NCDOT

 NCDOTcommunications

 @NCDOT

 ncdotcom

 ncdot_comm

Products Project Conclusions

Additional resources available that supported this Lunch and Learn Communication Process:

Matthew Carlisle, PE – State ITS & Signals Management Engineer (919) 814-4934 mtcarlisle@ncdot.gov

Jeremy Goodwin, PE, CPESC, CPSWQ – State Roadside Erosion Control and Roadside Management Engineer (919)707-2942 jagoodwin@ncdot.gov

Greg Hall – Lighting and Electrical Team Lead (919)707-6247 rghall@ncdot.gov

Bo Hemphill, PE – Eastern Utilities Manager (919)707-6981 bohempfill@ncdot.gov

Zack Little, PE – Eastern Region Signals Engineer (919)814-4915 zmlittle@ncdot.gov

Andy McDaniel, PE – Highway Stormwater Program Manager (919)707-6737 ahmcdaniel@ncdot.gov

Clark Morrison, PhD, PE – State Pavement Design Engineer (919)329-4018 csmorrison@ncdot.gov

Gichuru Muchane, PE – Assistant State Structures Engineer (919)707-6424 gmuchane@ncdot.gov

John Pilipchuk, PE – State Geotechnical Engineer (919)707-6850 jpilipchuk@ncdot.gov

Matt Springer, PE – Signing and Delineations Standards Engineer (919)814-5025 mspringer@ncdot.gov

Jamille Robbins – Public Involvement, Community Studies & Visualization Group Leader (919)707-6085 jarobbins@ncdot.gov

Jeff Walston, PE – Erosion Control Engineering Supervisor (919)707-2944 jdwalston@ncdot.gov

Thank you!
