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## Section 10

# DUTIES AND RIGHTS OF APPLICANTS AND SUPPLIERS ON THE APL

### 10.1 PURPOSE

The objective of this section is to describe the duties and rights of applicants and suppliers before and after APL product evaluation/certification.

### 10.2 FEES

As an entity within a state agency, the TERL obtains financial support through two primary sources: general revenue (money from general taxes) and trust funds (money from state and federal sources). The TERL does not charge fees for application processing or reviews, on-site facility audits, QMS or product evaluations. However, the applicant/supplier shall be responsible for costs such as:

- (1) Shipping products for evaluation to the TERL;
- (2) Testing of products through independent test laboratories (as applicable);
- (3) Evaluated product returns;
- (4) Installation and operation of products for evaluation on TERL property or elsewhere as instructed (as applicable); and
- (5) Product returns associated with non-conformances found during product evaluations (see **Section 3.7**).

### 10.3 CONFIDENTIALITY

Because the state has a broad public records law where most written communications with regulatory agencies are subject to disclosure to the public upon request, the TERL is not authorized to sign confidentiality or non-disclosure agreements.

The public records law provides for safeguarding confidentiality of information under certain conditions. PATH, application forms and notice-related documents listed in **Sections 3.2, 3.3, 3.4** and **3.6** contain instructions for applicants and suppliers to review Florida Statutes regarding public records and the exemptions applicable to public records requests that concern trade secrets. To the extent allowed by state law, the TERL will ensure that confidentiality is maintained by its staff concerning information received and marked as a “trade secret” or “confidential” by the applicant/supplier. Also, following a public records request, for documents so marked, the FDOT Office of General Counsel or the TERL will inform the affected applicant/supplier of the request made so the applicant/supplier may take steps to protect its asserted trade secret.

The obligation of confidentiality does not apply to information which is:

- (1) Not marked as a “trade secret” or “confidential” upon submission to the TERL by the applicant/supplier;
- (2) In the public domain;
- (3) Disclosed to the TERL by a third party;
- (4) Independently developed or procured by the TERL; and
- (5) Required by law, product certification requirements, specified standards, or procedures to be disclosed.

Florida Statutes regarding public records and the exemptions applicable to public records requests that concern trade secrets, are available at:

<http://www.leg.state.fl.us/statutes/index.cfm>

For confidentiality reasons, the TERL will inform the applicant/supplier, in advance of the information it intends to place on the APL (e.g., product photos, schematics) unless the information is already available in the public domain.

## 10.4 ACCESS TO APPLICANT/SUPPLIER FACILITIES

The applicant/supplier shall provide TERL staff unobstructed access to their facilities and those of its contract manufacturers/designers or customer service providers in relation to the products to be certified. The applicant/supplier shall make all necessary arrangements for:

- (1) The conduct of the QMS evaluation and surveillance (if required), including provision for examining documentation and records, and access to the relevant equipment, location(s), area(s), personnel, and subcontractors used by the applicant/supplier;
- (2) The investigation of complaints; and
- (3) The participation of observers authorized by the TERL.

## 10.5 PRODUCT RETENTION

The product sample found by testing to be in conformity with the standard(s) and upon which the certification is granted remains the property of the supplier. However, for certain types of products as defined in **Section 4**, the certified product sample will be retained by the TERL as long as the product remains listed on the APL.

If the product sample submitted for certification does not meet the standard(s), is not listed in **Section 4** as a post-APL certification product retained by the TERL or is no longer listed on the APL, upon notification by the Department, the applicant will have 60 calendar days to retrieve the sample. After such time, the TERL reserves the right to dispose of the unclaimed sample without further notification to the supplier.

## 10.6 PRODUCT MARKING

The supplier shall permanently mark its certified products with the following, at a minimum:

- (1) Supplier name or trademark;
- (2) Part number; and
- (3) Serial number or date code.

The product marking shall remain visible after the product is installed. In addition, the product marking shall match the product information on the APL.

## 10.7 CONTINUED CONFORMITY TO PRODUCT AND QMS STANDARDS

The supplier shall produce the products for which the certification is granted, to the same specifications as the sample the TERL found by its evaluation to be in conformity with the standard(s) specified on the APL.

The supplier (including its contract manufacturers/designers and customer service providers) shall operate the facilities covered by the QMS acceptance/re-acceptance (in relation to the certified products) in conformity with the QMS requirements used for evaluating and accepting/re-accepting the QMS.

## 10.8 CHANGES TO PRODUCT OR QMS

The supplier shall inform the TERL, without delay, of changes in the product, the production process, the QMS, or any other change that may affect its ability to conform to the certification requirements. Examples of changes can include the following:

- (a) Legal, commercial, organizational status or ownership;
- (b) Organization and management;
- (c) Modifications to the product, production method or product replacement;
- (d) Contact address and manufacturing sites;
- (e) Scope of operations (design/development, manufacturing, testing, customer service) under the QMS acceptance/re-acceptance; and
- (f) Major changes to the QMS.

The TERL will evaluate whether the changes require further investigation. If further investigation is required, the TERL will notify the supplier and the supplier shall not sell any modified product in the state without the TERL's authorization.

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## **10.9 MODIFICATION OF PRODUCT REQUIREMENTS**

If product requirements applying to the products covered by the certification are modified, the TERL will inform the supplier, stating at what date the modified requirements are effective, and notify the supplier of any need for supplemental evaluation of these products.

Within the specified period of time after receipt of the notification, the supplier shall inform the TERL whether it is prepared to comply with the modified product requirements. If the supplier gives confirmation within the specified period of time of compliance with modified requirements and provided the result of any supplemental evaluation is favorable, the supplier's APL listing will be modified with a revised approval date.

If the supplier advises the TERL that it is not prepared to comply with the modified product requirements within the specified time, if the supplier allows the terms for compliance to lapse, or if the result of any supplemental evaluation is not favorable, the certification covering the particular product shall cease to be valid on the date on which the modified specifications become effective.

## **10.10 USE OF APL LISTING, TERL/DEPARTMENT NAME, AND MARK OF CONFORMITY**

The supplier shall ensure that all of its claims are within the scope of the product's APL listing. No claims to a supplier's "product certification" shall be made (either explicitly or by implication) by a supplier without a statement of the full details of the certification, as detailed in the APL listing.

The TERL or Department as a whole do not require or authorize the use of a mark of conformity (including the TERL/FDOT name or logo) for a certified product or an accepted QMS. Depending on the product type, and as specified in the applicable product specification, the APL product certification number must be marked on the certified product. When this requirement applies, the APL certification number may be preceded by the following text: "FDOT APL number".

## **10.11 REFERENCE TO CERTIFICATION GRANTED**

The supplier has the right to publish the fact that its QMS has been accepted/re-accepted and that its products have been certified by the TERL. The TERL publishes conformity with the standard(s) by placing the supplier's product on the state's APL.

The supplier shall not use its product certification in such a manner as to bring the TERL/Department into disrepute and not make any statement regarding its QMS acceptance/re-acceptance or product certification that the TERL/Department may

consider misleading or unauthorized. Incorrect references to the certification process, or misleading use of the APL listing, QMS acceptance/re-acceptance or the APL, found in documentation or other publicity, in the Department's sole discretion, shall be dealt with penalties as defined in **Section 3.6**.

In referring to the product certification granted in communication media such as documents, brochures, catalogs, web sites or advertising, the supplier shall:

- (1) Unambiguously identify the products that are certified so no confusion arises between certified and non-certified products;
- (2) Not use any FDOT or FDOT-TERL logo when identifying the certified product or the accepted/re-accepted QMS;
- (3) Not make any claims that imply the supplier itself is in any way "Listed"; and "Qualified", "Pre-Qualified", "Certified" or "Approved" by FDOT or FDOT-TERL.
- (4) Not reference the TERL product certification on company stationery, business cards or signs. Use of these references on such materials could incorrectly imply more than a third-party certification relationship between the supplier and the TERL, or incorrectly imply that all products owned by the supplier have been certified by the TERL.

The supplier of a certified product is entitled to use the following phrases:

- (1) "The product is listed on Florida's Approved Product List.";
- (2) "The product is certified and listed on Florida's Approved Product List.";
- (3) "The product is listed under certification number XXX-XXX-XXX on Florida's Approved Product List.";
- (4) "A representative sample of this product has been evaluated by the FDOT Traffic Engineering Research Laboratory and meets applicable FDOT product standards for listing on Florida's Approved Product List."

Similarly, the supplier of an accepted/re-accepted QMS is entitled to use the following phrases:

- (5) "The quality management system is listed on Florida's Acceptable Quality System List.";
- (6) "The quality management system is accepted and listed on Florida's Acceptable Quality System List."; and
- (7) "The quality management system has been evaluated by the FDOT Traffic Engineering Research Laboratory and meets applicable FDOT quality management system standards for listing on Florida's Acceptable Quality System List."

## 10.12 COMPLAINTS RECEIVED BY SUPPLIER

The supplier shall keep a record of all complaints made known to it relating to compliance of the certified products with certification requirements. The supplier shall

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make these records available to the TERL when requested. Finally, the supplier shall:

- (1) Take appropriate action with respect to such complaints and any deficiencies found in products that affect compliance with the requirements for certification; and
- (2) Document the actions taken.

### **10.13 QMS SURVEILLANCE**

The TERL carries out continuing surveillance of the supplier's QMS, in accordance with the conditions stated in **Section 5.4**.

### **10.14 TERMINATION, REDUCTION, SUSPENSION OR WITHDRAWAL OF CERTIFICATION**

The TERL reserves the right to reduce, suspend, or withdraw certification at any time. Certification may be reduced, suspended, or withdrawn for failure to comply with certification requirements detailed in the **Product Certification Handbook**.

Certification may be terminated at the request of the supplier.

Upon termination, reduction, suspension, or withdrawal of certification, the supplier shall discontinue its use of all advertising matter that contains any reference thereto and take further action as required by the TERL relating to the certification. At a minimum, the supplier shall discontinue the sale in the state of all products involved in the termination, reduction, suspension, or withdrawal.

### **10.15 APPEALS, DISPUTES AND COMPLAINTS**

Appeals/disputes/complaints (ADC) brought to the TERL by applicants/suppliers or other parties are subject to a documented procedure for complaint processing that includes investigation, response, and corrective action, where appropriate. The TERL's policy is to fully investigate and document all incoming ADCs that are determined to be relevant and credible, irrespective of their source.

For an appeal/dispute to be given consideration, a notification of appeal/dispute must be received by the TERL within 30 calendar days of the date of notification of the decision being disputed. General complaints may be received at any time. A notification of ADC must be made in writing and be accompanied by a suitable statement that describes the grounds for the ADC and all documented evidence. The TERL's goal is to provide an acknowledgement of receiving the ADC within 5 calendar days of its receipt.

## 10.16 DOCUMENT HISTORY

Rev	Description	Authored and Checked	Reviewed	Approved	Approval Date
1.0	New Product Certification Handbook section w/ comments from FDOT Legal Office addressed.	A. Burleson J. Morgan	D. Vollmer R. Meyer J. Morgan T. Tillander	M. Wilson	03/07/2013
2.0	Revised to address various clauses of the ISO 17065 standard: 4.1.2, 4.1.3, 4.6b, and 4.6c.	A. Burleson	J. Morgan	M. Wilson	08/05/2013
3.0	Added minimum product marking requirements transferred from specification A601 and policy regarding disposing of APL equipment not meeting product specification requirements.	A. Burleson	J. Morgan	M. Wilson	08/14/2013
4.0	Corrected typos in section 9.5.	M. Lucas	J. Morgan	M. Wilson	01/23/2014
5.0	Incorporated product certification agreement language. This section of the PCH is being referenced in the AQSL and APL applications. Also, included edits from the Legal Office.	A. Burleson	J. Morgan	M. Wilson	08/19/2014
6.0	Included revised language regarding confidentiality to match that specified by the Legal Office in application forms.	A. Burleson	J. Morgan	M. Wilson	09/23/2014
7.0	Updated position title for Mark Wilson in document control panel. Removed 'approval' terminology throughout document.	A. Burleson	J. Morgan	M. Wilson	03/04/2015
8.0	Specified that TERL notifies applicants/suppliers of the information it intends to place in the public domain (on the APL) to address clause 4.5.1 of the ISO 17065 standard (already addressed in TERL's quality manual). Removed reference to certification letters issued by TERL. Referenced section 4 regarding product retention.	A. Burleson	D. Vollmer M. DeWitt W. Geitz	J. Easterling	07/01/2022