Federal Highway Administration FHWA Florida Division Form FHWA-1273

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Sections VI & VII
Section VI
Subletting or Assigning the Contract

What is that?
Subletting or Assigning the Contract

• FHWA-1273 should be physically incorporated into all Federal-aid construction contracts and subcontracts.
  – Please review subcontracts for compliance.
• Should not be referenced electronically.
• Do not copy the text into the contract. This is allowed, but not preferred. We would rather see FHWA-1273 inserted because it is easier to see if it has been altered.
Subletting or Assigning the Contract

• FHWA-1273 is not to be altered.
  – Do not strike through text and provide a supplement.
  – Do not change text within the FHWA 1273

• If necessary, provide a supplement with any minor modifications, do not alter text. This can be done in a supplemental specification.

• Modification should not conflict with State or Federal laws and regulations and not change the intent of the required contract provisions.
Subletting or Assigning the Contract

• References:
  – 23 CFR 635.116 (*Subcontracting and contractor responsibilities*)

• Applicability:
  – Applies to all Federal-aid highway construction projects on the National Highway System, regardless of size, location, or funding source.
Subletting or Assigning the Contract

• Background:
  – The intent of this policy is to prohibit the “brokering” of a contract by a prime contractor (subletting all contract work).
  – Former requirement was 50 percent, but eased to 30 percent.
  – A reduction or waiver of the 30 percent self-performance requirement can be approved.
Subletting or Assigning the Contract

- **Guidance:**
  - Prime must perform at least 30% of the total original contract price
    - Includes cost of materials and manufactured products purchased/produced by contractor, but excludes cost of specialty work (minor - highly specialized ability/equipment) designated by State.
  - State requirements may be more stringent; FDOT at least 40%; several states “at least 50%” requirement. This does not apply to design-build projects.
Subletting or Assigning the Contract

• Guidance:

  – Contractor has designated (individual foreman /superintendent) on site in charge of construction operations.
  – Contractor responsible for performance and overall completion of the project.
  – No portion of work may be sublet, assigned, or subcontracted without consent of the State.
Subletting or Assigning the Contract

• Guidance:
  – Employee Lease Agreements
    • Are acceptable if under supervision and control of prime contractor – quality, payment of wages, payrolls, compliance, etc...
  – Subcontract approval in writing
    • Prime Needs to screen subcontractors – Suspension and Debarment
    • Appropriate provisions – Federal and State requirements in subcontract; 1273; DBE
    • Certification process allowed– needs to be monitored by State
Subletting or Assigning the Contract

• Non-NHS

  – 23 CFR 635.116 is considered a construction standard and not tied directly to 23 USC 112 (Letting of contracts) as a procurement requirement
  – Limit subcontracting requirements to NHS projects
  – Comply with State Laws – shall be design, constructed, operated, and maintain in accordance with State Law
Section VII
Safety: Accident Prevention

What is that?
Safety: Accident Prevention

• References:
  – 23 CFR 635.108 (*Health and Safety*)
  – 29 CFR 1926 (*Safety and Health Regulations for Construction*)

• Applicability: Applies to all Federal-aid highway construction projects regardless of size, location, or funding source.
Safety: Accident Prevention

• Background and Guidance:
  
  – OSHA - administrative responsibility
    • USDOL representatives granted right of entry to projects
  
  – FHWA required to ensure compliance with safety standards
    • State shares enforcement responsibility to alert the contractor and OSHA to problem situations.

  – Contractor must comply with applicable Federal, State and local laws governing safety, health, and sanitation.
Safety: Accident Prevention

• Guidance:
  – Contractor must provide safeguards, safety devices, and protective equipment protect employees and safety of the public.
  – No unsanitary, hazardous or dangerous conditions to employees
  – A construction site that is not properly guarded (i.e. traffic control) will impose a liability.
Safety: Accident Prevention

• Guidance:
  – If situation appears unsafe (i.e., you wouldn’t go into it (trench, scaffolding, etc.) willingly, discuss with contractor and note it in your diary, including the contractor’s response.
  – If it’s clearly a dangerous situation, you have the right to contact OSHA and shut the work down.
  – OSHA has begun to look at citing the contracting agency as well as the contractor for safety violations.
Safety: Accident Prevention

• Job site poster
Safety: Accident Prevention
Safety: Accident Prevention
Safety: Accident Prevention
Thank you!

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