

Anatomy of 1273

Federal Highway Administration FHWA Florida Division Form FHWA-1273

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Division

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 633 (*Required Contract Provisions*)
 - 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:
 - 40 U.S.C. 333 (*The Contract Work Hours and Safety Standards Act*)
 - 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.
 - AASHTO “Informational Guide on Occupational Safety,” 1972, still a good general reference

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



Job Safety and Health
It's the law!

OSHA
Occupational Safety and Health Administration
U.S. Department of Labor

EMPLOYEES:

- You have the right to notify your employer or OSHA about workplace hazards. You may ask OSHA to keep your name confidential.
- You have the right to request an OSHA inspection if you believe that there are unsafe and unhealthful conditions in your workplace. You or your representative may participate in that inspection.
- You can file a complaint with OSHA within 30 days of retaliation or discrimination by your employer for making safety and health complaints or for exercising your rights under the OSH Act.
- You have the right to see OSHA citations issued to your employer. Your employer must post the citations at or near the place of the alleged violations.
- Your employer must correct workplace hazards by the date indicated on the citation and must certify that these hazards have been reduced or eliminated.
- You have the right to copies of your medical records and records of your exposures to toxic and harmful substances or conditions.
- Your employer must post this notice in your workplace.
- You must comply with all occupational safety and health standards issued under the OSH Act that apply to your own actions and conduct on the job.

EMPLOYERS:

- You must furnish your employees a place of employment free from recognized hazards.
- You must comply with the occupational safety and health standards issued under the OSH Act.

This free poster available from OSHA –
The Best Resource for Safety and Health

Free assistance in identifying and correcting hazards or complying with standards is available to employers, without citation or penalty, through OSHA supported consultation programs in each state.

1-800-321-OSHA (6742)
www.osha.gov



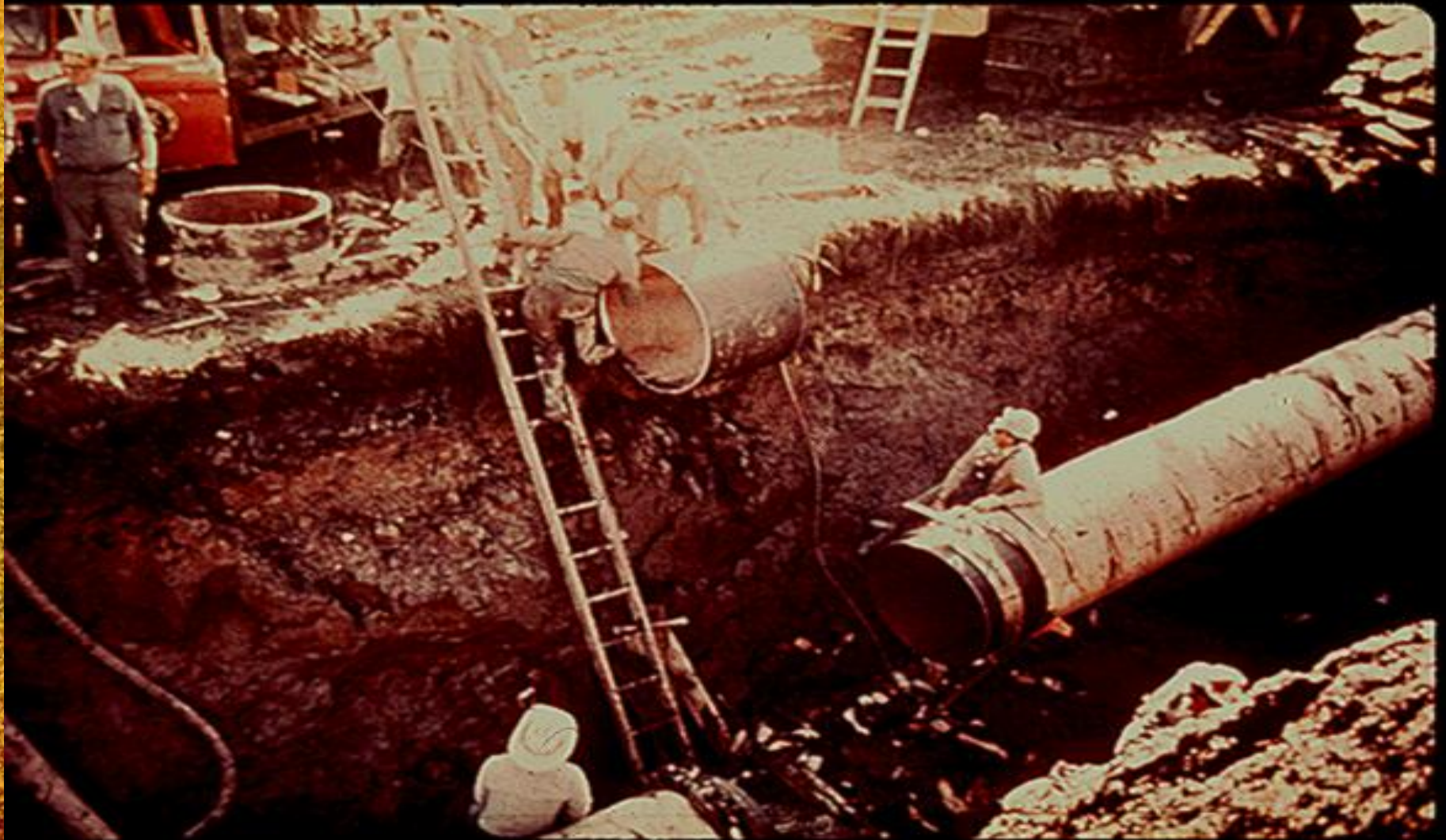
Safety: Accident Prevention



Safety: Accident Prevention



Safety: Accident Prevention



Thank you!

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