U.S. Department of Transportation
Federal Highway Administration

Memorandum

Subject: **INFORMATION:** Assignment of Federal-aid Contracts--Texas Proposed Specification

Date: SEP 22 1992

From: Director, Office of Engineering

Reply to Attn. of: HNG-22

To: Mr. Wesley S. Mendenhall, Jr.
Regional Federal Highway Administrator (HRA-06)
Fort Worth, Texas

We have reviewed the Region's request for clarification of FHWA policy regarding the assignment of Federal-aid contracts, which was transmitted by Mr. Jerry G. Jones' memorandum, dated July 21, 1992, to Mr. David R. Geiger. While our regulations do not specifically address this issue, 23 CFR 635.116 states that a contractor is required to perform 30 percent of the contract work with its own organization.

However, limited circumstances may exist for which it is appropriate to assign a contract. Specifically, the assignment of a contract may be allowed under the following instances:

1. When a contractor undergoes a name change. Under this case the company structure is unchanged and the change of name is simply a formality. This type of transaction does not require FHWA approval.

2. When a contractor is purchased in whole or in part by a third party or undergoes a merger. The action prompting the assignment must include all of the contractor's assets and liabilities (i.e., equipment, materials, etc.) involved with the performance of the contract. In other words, a contractor cannot simply sell or broker a Federal-aid contract to another party. An assignment under these circumstances may be made subject to the approval of the Division Administrator.

3. Under the limited circumstances listed above in item 2, contracts for projects which are exempt from FHWA oversight, as provided in 23 U.S.C. 106(b), as amended by Section 1016 of the Intermodal Surface Transportation Efficiency Act of 1991, may be assigned without FHWA approval.

It should be noted that representatives of the Texas Chapter of the Associated General Contractors of America have been very vocal to Headquarters personnel on the issue of assuring that the integrity of the competitive bid process be

maintained. We are cognizant of the industry's concerns; however, we believe that the assignment of contracts under the limited circumstances set forth above will not compromise the competitive bid process.

The special provision proposed by the Texas Department of Transportation is very general and does not adequately define under what circumstances contracts can be assigned. In order to be acceptable for use on Federal-aid projects, the conditions under which a contract can be assigned should be specified. Please contact Mr. John Rohlf at (202) 366-0606 or Mr. Wilbert Baccus at (202) 366-0780 if there are any questions.

Thomas O. Willett

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