



U.S. Department
of Transportation

**Federal Highway
Administration**

Washington, D.C. 20590

Memorandum

Subject: Subcontract Criteria

Date: DEC 4 1984

From: Associate Administrator for
Engineering and Operations

Reply to
Attn. of:

HHO-32

To: Regional Federal Highway Administrators
Regions 1-10

The Washington Headquarters has recently received inquiries concerning subcontract criteria. These questions have been raised because the regulations (23 CFR 635.113), which were revised in August of 1982, no longer contain detailed information in this subject area.

When the regulation was reviewed and revised in 1982, material was deleted that was considered to be extraneous detail not needed in the CFR. However, the criteria that was found in that earlier reference is still the correct procedure for determining whether the contractor is in compliance with the subcontracting percentage limitation. The pertinent portions of the regulation that existed prior to the 1982 revision are attached for your reference. The current regulations require the contractor to perform not less than 30 percent of the work.

Rex C. Leathers

Attachment

only a part of a contract item is to be sublet, its proportional value shall be determined administratively on the same basis. This procedure should be followed even when the part not sublet consists only of procuring the materials. However, when a firm both sells materials to a prime contractor and performs the work of incorporating the materials into the project, these two phases must be considered in combination and as constituting a single subcontract.

§ 635.113 Subcontracting.

(a) The following terms as used in this section are defined as follows:

(1) "His own organization" shall be construed to include only workmen employed and paid directly by the prime contractor and equipment owned or rented by him, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.

(2) "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, craftsmanship, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract. However, the fabrication and erection of certain types of steel structures are of such a nature and intricacy that they should be considered "Specialty Items," even though the cost of this work may constitute the major portion of the contract amount.

(f) To determine whether the contractor is in compliance with the requirement that he perform with his own organization contract work amounting to not less than 50 percent of the total original contract price, the following criteria shall apply:

(1) The contract amount upon which the 50 percent requirement is computed shall include the cost of materials and manufactured products which are to be purchased or produced under the contract provisions.

(2) The percentage of subcontracted work shall be based on the contract, rather than subcontract unit prices. If

* currently 30%