

HIGHWAY CONSTRUCTION BID LIMIT REDUCTION

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen G. Handy

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Transportation Code by amending provisions relating to the bid limit for highway construction on certain highways.

Highlighted Provisions:

This bill:

- ▶ reduces the bid limit for a construction or improvement project on a class B or class C road; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

72-6-107, as last amended by Laws of Utah 2012, Chapter 347

72-6-109, as last amended by Laws of Utah 2007, Chapter 69

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **72-6-107** is amended to read:

72-6-107. Construction or improvement of highway -- Contracts -- Retainage --



28 **Certain indemnification provisions forbidden.**29 (1) As used in this section [~~,"design professional" means~~]:

30 (a) "Bid limit" means:

31 (i) for the year 2003, \$125,000; and32 (ii) for each year after 2003, the amount of the bid limit for the previous year, plus an
33 amount calculated by multiplying the amount of the bid limit for the previous year by the lesser
34 of 3% or the actual percent change in the Consumer Price Index during the previous calendar
35 year.36 (b) "Consumer Price Index" means the Consumer Price Index for All Urban
37 Consumers as published by the Bureau of Labor Statistics of the United States Department of
38 Labor.39 (c) "Design professional" means:40 [~~(a)~~] (i) an architect, licensed under Title 58, Chapter 3a, Architects Licensing Act;41 [~~(b)~~] (ii) a landscape architect, licensed under Title 58, Chapter 53, Landscape42 Architects Licensing Act; [~~and~~] or43 [~~(c)~~] (iii) a professional engineer or professional land surveyor, licensed under Title 58,
44 Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.45 (2) (a) The department shall make plans, specifications, and estimates prior to the
46 construction or improvement of any state highway.47 (b) Except as provided in Section 63G-6a-1402 and except for construction or
48 improvements performed with state prison labor, a construction or improvement project with
49 an estimated cost exceeding the bid limit [~~as defined in Section 72-6-109~~] for labor and
50 materials shall be performed under contract awarded to the lowest responsible bidder.

51 (c) (i) The department:

52 (A) shall publish an advertisement for bids in accordance with Section 45-1-101, for a
53 period of two weeks ending no more than 10 days before bids are opened; and54 (B) may publish an advertisement for bids in a newspaper of general circulation in the
55 county in which the work is to be performed.56 (ii) If the department publishes an advertisement for bids in a newspaper under
57 Subsection (2)(c)(i)(B), the department shall publish the advertisement at least once a week for
58 two consecutive weeks, with the last publication at least 10 days before bids are opened.

59 (d) (i) The department shall receive sealed bids and open the bids at the time and place
60 designated in the advertisement.

61 (ii) The department may then award the contract but may reject any and all bids.

62 (e) If the department's estimates are substantially lower than any responsible bid
63 received, the department may perform any work by force account.

64 (3) If any payment on a contract with a private contractor for construction or
65 improvement of a state highway is retained or withheld, the payment shall be retained or
66 withheld and released as provided in Section 13-8-5.

67 (4) If the department performs a construction or improvement project by force account,
68 the department shall:

69 (a) provide an accounting of the costs and expenditures of the improvement including
70 material and labor;

71 (b) disclose the costs and expenditures to any person upon request and allow the person
72 to make a copy and pay for the actual cost of the copy; and

73 (c) perform the work using the same specifications and standards that would apply to a
74 private contractor.

75 (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
76 department shall establish procedures for:

77 (a) hearing evidence that a region within the department violated this section; and

78 (b) administering sanctions against the region if the region is found in violation.

79 (6) (a) Beginning May 12, 2009, a contract, including an amendment to an existing
80 contract, entered into under authority of this chapter may not require that a design professional
81 indemnify another from liability claims that arise out of the design professional's services,
82 unless the liability claim arises from the design professional's negligent act, wrongful act, error
83 or omission, or other liability imposed by law.

84 (b) Subsection (6)(a) may not be waived by contract.

85 (c) Notwithstanding Subsections (6)(a) and (b), a design professional may be required
86 to indemnify a person for whom the design professional has direct or indirect control or
87 responsibility.

88 Section 2. Section 72-6-109 is amended to read:

89 **72-6-109. Class B and C roads -- Construction and maintenance -- Definitions --**

90 **Estimates lower than bids -- Accountability.**91 (1) As used in this section and Section [72-6-108](#):

92 (a) "Bid limit" means:

93 (i) for the year [~~2003, \$125,000~~] 2015, \$100,000; and94 (ii) for each year after [~~2003~~] 2015, the amount of the bid limit for the previous year,
95 plus an amount calculated by multiplying the amount of the bid limit for the previous year by
96 the lesser of 3% or the actual percent change in the Consumer Price Index during the previous
97 calendar year.98 (b) "Consumer Price Index" means the Consumer Price Index for All Urban
99 Consumers as published by the Bureau of Labor Statistics of the United States Department of
100 Labor.

101 (c) (i) "Construction" means the work that would apply to:

102 (A) any new roadbed either by addition to existing systems or relocation;

103 (B) resurfacing of existing roadways with more than two inches of bituminous
104 pavement; or105 (C) new structures or replacement of existing structures, except the replacement of
106 drainage culverts.107 (ii) "Construction" does not include maintenance, emergency repairs, or the installation
108 of traffic control devices as described in Section [41-6a-302](#).109 (d) "Improvement project" means construction and maintenance as defined in this
110 section except for that maintenance excluded under Subsection (2).111 (e) "Maintenance" means the keeping of a road facility in a safe and usable condition to
112 which it was constructed or improved, and includes:113 (i) the reworking of an existing surface by the application of up to and including two
114 inches of bituminous pavement;

115 (ii) the installation or replacement of guardrails, seal coats, and culverts;

116 (iii) the grading or widening of an existing unpaved road or flattening of shoulders or
117 side slopes to meet current width and safety standards; and118 (iv) horizontal or vertical alignment changes necessary to bring an existing road in
119 compliance with current safety standards.

120 (f) "Project" means the performance of a clearly identifiable group of associated road

121 construction activities or the same type of maintenance process, where the construction or
122 maintenance is performed on any one class B or C road, within a half-mile proximity and
123 occurs within the same calendar year.

124 (2) The following types of maintenance work are not subject to the contract or bid limit
125 requirements of this section:

126 (a) the repair of less than the entire surface by crack sealing or patching; and

127 (b) road repairs incidental to the installation, replacement, or repair of water mains,
128 sewers, drainage pipes, culverts, or curbs and gutters.

129 (3) (a) (i) If the estimates of a qualified engineer referred to in Section 72-6-108 are
130 substantially lower than any responsible bid received or in the event no bids are received, the
131 county or municipality may perform the work by force account.

132 (ii) In no event shall "substantially lower" mean estimates that are less than 10% below
133 the lowest responsible bid.

134 (b) If a county or municipality performs an improvement project by force account, it
135 shall:

136 (i) provide an accounting of the costs and expenditures of the improvement including
137 material, labor, and direct equipment costs to be calculated using the Cost Reference Guide for
138 Construction Equipment by Dataquest Inc. or the Federal Emergency Management Agency
139 schedule of equipment rates;

140 (ii) disclose the costs and expenditures to any person upon request and allow the
141 person to make a copy and pay for the actual cost of the copy; and

142 (iii) perform the work using the same specifications and standards that would apply to
143 a private contractor.

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Office of Legislative Research and General Counsel