

72-6-107 Construction or improvement of highway -- Contracts -- Retainage -- Certain indemnification provisions forbidden.

- (1) As used in this section, "design professional" means:
 - (a) an architect, licensed under Title 58, Chapter 3a, Architects Licensing Act;
 - (b) a landscape architect, licensed under Title 58, Chapter 53, Landscape Architects Licensing Act; and
 - (c) a professional engineer or professional land surveyor, licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.
- (2)
 - (a) The department shall make plans, specifications, and estimates prior to the construction or improvement of any state highway.
 - (b) Except as provided in Section 63G-6a-1402 and except for construction or improvements performed with state prison labor, a construction or improvement project with an estimated cost exceeding the bid limit as defined in Section 72-6-109 for labor and materials shall be performed under contract awarded to the lowest responsible bidder.
 - (c)
 - (i) The department:
 - (A) shall publish an advertisement for bids in accordance with Section 45-1-101, for a period of two weeks ending no more than 10 days before bids are opened; and
 - (B) may publish an advertisement for bids in a newspaper of general circulation in the county in which the work is to be performed.
 - (ii) If the department publishes an advertisement for bids in a newspaper under Subsection (2)(c)(i)(B), the department shall publish the advertisement at least once a week for two consecutive weeks, with the last publication at least 10 days before bids are opened.
 - (d) The department shall receive sealed bids and open the bids at the time and place designated in the advertisement. The department may then award the contract but may reject any and all bids.
 - (e) If the department's estimates are substantially lower than any responsible bid received, the department may perform any work by force account.
- (3) If any payment on a contract with a private contractor for construction or improvement of a state highway is retained or withheld, the payment shall be retained or withheld and released as provided in Section 13-8-5.
- (4) If the department performs a construction or improvement project by force account, the department shall:
 - (a) provide an accounting of the costs and expenditures of the improvement including material and labor;
 - (b) disclose the costs and expenditures to any person upon request and allow the person to make a copy and pay for the actual cost of the copy; and
 - (c) perform the work using the same specifications and standards that would apply to a private contractor.
- (5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall establish procedures for:
 - (a) hearing evidence that a region within the department violated this section; and
 - (b) administering sanctions against the region if the region is found in violation.
- (6)
 - (a) Beginning May 12, 2009, a contract, including an amendment to an existing contract, entered into under authority of this chapter may not require that a design professional indemnify another from liability claims that arise out of the design professional's services, unless

the liability claim arises from the design professional's negligent act, wrongful act, error or omission, or other liability imposed by law.

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

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

Amended by Chapter 347, 2012 General Session