

**Effective 5/1/2024**

**72-6-109 Class B and C roads -- Construction and maintenance -- Definitions -- Estimates lower than bids -- Accountability.**

(1) As used in this section and Section 72-6-108:

(a) "Bid limit" means:

- (i) for the year 2024, \$350,000; and
- (ii) for each year after 2024, the amount of the bid limit for the previous year, plus an amount calculated by multiplying the amount of the bid limit for the previous year by the actual percent change in the National Highway Construction Cost Index during the previous calendar year.

(b)

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

- (A) any new roadbed either by addition to existing systems or relocation;
- (B) resurfacing of existing roadways with more than two inches of bituminous pavement; or
- (C) new structures or replacement of existing structures, except the replacement of drainage culverts.

(ii) "Construction" does not include maintenance, emergency repairs, or the installation of traffic control devices as described in Section 41-6a-302.

(c) "Improvement project" means construction and maintenance as defined in this section except for that maintenance excluded under Subsection (2).

(d) "Maintenance" means the keeping of a road facility in a safe and usable condition to which it was constructed or improved, and includes:

- (i) the reworking of an existing surface by the application of up to and including two inches of bituminous pavement;
- (ii) the installation or replacement of guardrails, seal coats, and culverts;
- (iii) the grading or widening of an existing unpaved road or flattening of shoulders or side slopes to meet current width and safety standards; and
- (iv) horizontal or vertical alignment changes necessary to bring an existing road in compliance with current safety standards.

(e) "National Highway Construction Cost Index" means the National Highway Construction Cost Index published by the Federal Highway Administration.

(f) "Project" means the performance of a clearly identifiable group of associated road construction activities or the same type of maintenance process, where the construction or maintenance is performed on any one class B or C road, within a half-mile proximity and occurs within the same calendar year.

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

- (a) the repair of less than the entire surface by crack sealing or patching; and
- (b) road repairs incidental to the installation, replacement, or repair of water mains, sewers, drainage pipes, culverts, or curbs and gutters.

(3)

(a)

- (i) If the estimates of a qualified engineer referred to in Section 72-6-108 are substantially lower than any responsible bid received or in the event no bids are received, the county or municipality may perform the work by force account.
- (ii) In no event shall "substantially lower" mean estimates that are less than 10% below the lowest responsible bid.

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

- (i) provide an accounting of the costs and expenditures of the improvement including material, labor, and direct equipment costs to be calculated using the Cost Reference Guide for Construction Equipment by Dataquest Inc. or the Federal Emergency Management Agency schedule of equipment rates;
- (ii) 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
- (iii) perform the work using the same specifications and standards that would apply to a private contractor.

(4) A county or municipality may not provide construction services to another municipality until the requirements in Section 72-6-108 have been satisfied by the receiving county or municipality.

(5) For any construction self-performed by a county or municipality that exceeds the bid limit, the county or municipality shall seek private bids in accordance with Section 72-6-108.

(6)

- (a) Before self-performing any construction, and at least annually, a county or municipality shall ensure that the aggregate, asphalt, and concrete materials owned by the county or municipality for construction use are tested by an independent, qualified firm to ensure the materials meet the same standards required by the department for private contractors for the same work.
- (b) The legislative body of the county or municipality shall ensure that the results of the tests described in Subsection (6)(a) are public record.

Amended by Chapter 469, 2024 General Session