

5800500 Landscape Installation – Plant Establishment Period and Contractor’s Warranty.
COMMENTS FROM INTERNAL/INDUSTRY REVIEW

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Comment: (8-11-10) I do not have a legal problem with requiring a bond prior to final acceptance however, the remainder of this specification (although not up for modification) is defective. It is not clear from the wording of this section what is expected to be warranted or bonded. It even states, “As part of the warranty...” but what are the other parts of the warranty. The warranty expires at the end of the establishment period but there is no mention of when the surety is released from the bond or what the requirements of the bond are. If you are going to have a maintenance bond then you may want to draft a sample one to be used like our construction bond. Do bonding companies even provide such bonds. Combining warranties and bonds is legally confusing. We should use one or another. A warranty is a contract typically from the manufacturer who is standing behind its product and will replace or repair depending upon the terms of the warranty. If they don’t you sue the manufacturer for breach of warranty. You are familiar with bonds where a third party stands liable for a defective product. My opinion this section 580-5 needs to be redrafted to clarify what is required from the contractor and the terms of the warranty or bond.

Response:

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Comments: (9-7-10) From a CEI point of view, I cannot tell you how many times I have had issues with Contractors and obtaining a bond. The Bonding Companies (at least some that I have worked with i.e. Travelers, Western Casualty,) do not want to issue the Bond until the contract has been final accepted, so that the date of initiation of the bond and expiration of the bond can be inserted by the bond company. It does also take time for a Contractor to produce the bond itself depending upon the location of the bonding company, some are based out of state. This should be reviewed further with industry bond companies prior to adding such a statement. The same goes for the bond in the signalization spec. The problem exists there too.

Response:

Comments: (9-8-10) Suggest the following change be made to the altered portion as follows: As a condition of final acceptance in accordance with 5-11, provide...

Response:

Ken Zinck
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Comments: (9-14-10) Comment/Question from Tonii Brush of District 5 Construction:<<>>
Will the final acceptance actually be held until the warranty bond is received or will this be like the requirements of the contractor's as-built plans where the final acceptance is made with outstanding documents and if they are not received within 90 days after that then their qualification is pulled?

Response:

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Comments: (9-16-10) Comments from Larry Akerson of Ocala Operations:<<>>I only have 1 comment; The next to the last paragraph: "Prior to the end of the establishment period, remove all staking and guying from the project." Insert after the coma following establishment period - and after plant establishment has been verified, Otherwise the staking and guying could be removed anytime during the establishment period, one year, and the plants may not be established yet. Thank you.

Response:

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Comments: (9-20-10) This is a good change. However, getting the bond before Final Acceptance has never been a problem for me. On the other hand, getting the bonding company to be forthcoming with their responsibilities has always been a problem. If we cannot "use" the bond, then why pay for it at all? I feel that Final Acceptance should be issued ONLY after the Establishment Period has been Accepted.

Response:

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