

§105-19 CONTRACTOR WARRANTIES

I. GENERAL

A Contractor may propose to provide a warranty against defects in any contract pay item with the concurrence of the Department. Under the most common circumstances, a Contractor may propose to provide a warranty against defects in hot mix asphalt (HMA) surface course including shoulders ONLY for placement outside seasonal limitations. A warranty may NOT be used for work performed that is not in conformance with the specification. The process detailed below is for warranty of HMA, but a similar process can be adapted for a warranty of any item or work. The Contractor may propose the use of a warranty at any time during the contract.

The Contractor must warrant that, at the conclusion of the contract warranty phase, the contract site will be fit for its intended purposes,

- that the work shall be free of defects (as contained in the warranty specification);
- that materials, supplies and equipment furnished under this contract will be of good quality;
- that all work has been performed in a workman-like manner; and
- that all work will meet all of the requirements of the contract.

II. RESPONSIBILITIES

A. Contractor.

The Contractor is responsible for initiating the warranty, performing work under the warranty in conformance with the specifications, and correcting any defects covered by the warranty. The Contractor must submit the *HMA Pavement Warranty Report* (See Exhibit B) for warranty work.

B. Department

1. The Regional Construction Engineer (RCE) has overall coordination responsibility for the program, and designates specific responsibilities to staff members for ensuring compliance with the specification and for program continuity.
2. The EIC implements the program, and coordinates with the Contractor and approves work constructed under the work phase of the warranty.
3. The Construction Area Supervisor oversees the contract and ensures compliance with the specification and these guidelines.
4. The Regional Materials Engineer (RME) inspects the warranted work at the end of the warranty period, and submits a *Warranted Work Inspection Report* (See Exhibit C) to the RCE and to the EIC, after inspection.

III. ADMINISTRATIVE PROCEDURE

A. Initiating the Warranty

1. The Contractor must notify the Department in writing of the election of the warranty at least 15 calendar days prior to beginning warranty work.
2. Discuss the Contractor's proposal with the area supervisor to ensure that the request fulfills the intent of the specification. Obtain written approval from the RCE prior to the start of the initial warranty work.
3. The warranty need only be elected once for the Contractor to warranty an item. The Contractor can warranty different sites at different times once it elects the warranty. However, the Contractor must notify the EIC that it is performing warranty work at additional locations, prior to starting work.

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4. Prepare a change order which serves only to incorporate the warranty specification into the contract. The change order has no contract pay items associated with it. The explanation should state that the Contractor has elected to use the warranty specification. Attach a copy of the warranty specification to the change order.
5. A pre-warranty meeting with the Department and Contractor is held prior to the beginning of a warranty paving. The parties review and complete *Pre-Warranty Paving Meeting Check List* (See Exhibit A) during the meeting. The purpose of this meeting is to ensure both parties fully understand the intent and the scope of the warranty specification and to discuss and resolve potential impediments to the success of the warranty pavement. Examples of items to be considered and discussed prior to the start of warranty pavement are:
 - Overview of responsibilities, bonding, inspection of the warranted pavement.
 - Minimum required surface temperatures and surface conditions.
 - Minimum pavement lifts thickness.
6. The quantity of warranty paving is recorded on a DWR on a daily basis using the original item numbers with the word "warranty" added to the LOCATION/DESCRIPTION.
7. The Contractor must document the work in accordance with Paragraph B of the specification. This documentation shall be made in the warranty report attached hereto as Exhibit B.
8. The Contractor must submit the warranty report to the EIC as soon as warranty work is complete for each location of warranty work.
9. The EIC signs and date the warranty report indicating that the warranty work was satisfactorily completed by the Contractor. This serves to acknowledge that the work operation to be warranted has been completed and establishes the date the warranty begins. Attach a copy of the warranty report to the Daily Work Report (DWR).
10. Do not process an Estimate to pay for the work to be warranted until the warranty report is submitted and accepted by the EIC.
11. Forward copies of the warranty report to the RME and the RCE.
12. Based upon the information contained in the warranty report, determine the total cost of the items involved with the warranty work, based upon quantities and contract bid prices. This amount will be used to determine the amount of the bond, if a bond is required.
13. The RME will determine when inspection of the warranty work is required, upon receipt of the warranty report from the EIC. The RME or his designee will conduct the inspection and fill out the *Warranted Work Inspection Report*, and submit copies to the RCE and EIC. If defects are noted following inspection of the pavement by the RME, the EIC and RME will meet with the Contractor to discuss the pavement distress and record the findings on the *Warranted Work Inspection Report*, including the parties opinion(s) of the cause of the distress. Refer to the Strategic Highway Research Program (SHRP) *Distress Identification Manual* as a resource to consider in the event a dispute over distresses arises.
14. Do not assess Liquidated Damages or Engineering Charges for time periods during which the Contractor performs repairs to warranty work.

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B. Warranty Period.

There are two separate time frames for the warranty.

1. For warranty work completed within one year prior to the contract completion date, the warranty runs from the date the EIC approves the warranty report and ends 1 year from that date.
2. For warranty work completed more than 1 year prior to the contract completion date, the warranty runs from the date the EIC approves the warranty report and ends on the date of contract final acceptance. The duration of the warranty in this case will exceed one year.

C. Bonds.

Performance and Labor and Materials bonds are required if the warranty period extends beyond Contract Final Acceptance.

1. The Contractor must submit performance bonds and labor and material bonds. The performance bonds and labor and material bonds shall be for the full value of all warranty work submitted by the Contractor. If there is more than one warranty location, use the sum of the full value of each of the warranties to determine the amount of the bond required, or have the Contractor submit a separate bond for each location.
2. The amount of the bond includes the dollar value of all of the pavement placed and other items of work necessary to restore the pavement which has been warranted to its original form. This may include the cost of work zone traffic control, pavement markings, traffic signal loops, etc.
3. The bond must be in effect prior to contract final acceptance. Do not request contract final acceptance without having these bonds submitted for the full amount of the warranty work.
4. The Region will forward the original or copy of bonds to the Contract Management Bureau.

D. Insurance.

Insurance coverage is required if the warranty period extends beyond the Contract Final Acceptance date.

1. The Contractor must submit proof of insurance to Contract Management Bureau in accordance with §107-06 *Insurance*.
2. If there are multiple warranty locations, determine the date when the last warranty period expires, and insurance coverage must remain in force through that date.
3. Advise Contract Management Bureau of the final warranty expiration date so they can ensure the proper coverage remains in effect for the entire period of the warranty.
4. The insurance coverage must be in effect prior to contract final acceptance by the Department. Do not close out any contracts without insurance being in effect.

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E. Documentation of Work.

Document the work which constitutes the warranty on the *HMA Pavement Warranty Report*. The Contractor must provide all information contained on this report. Document the limits of the warranty work by recording at a minimum, the quantity of hot-mix asphalt top course pavement placed, the location of pavement placed by station number, dates and times of performance of the work, and attaching the *HMA Pavement Warranty Report* to the DWR. Once the warranty report is accepted by the EIC, record the date the warranty is due to expire.

F. Evaluating the Pavement for Distress.

The RME or his/her designee will inspect the pavement in accordance with the following guidelines:

1. Perform all inspections within one year.
2. Schedule an inspection so that if repairs are necessary, they can be made during times of good weather.
3. Inspect pavement placed prior to May 1st of a calendar year within the calendar year it was placed, preferably in August or early September.
4. Inspect pavement placed after May 1st of a calendar year the following calendar year.

If there are signs of distress, contact the Contractor and follow the steps provided for in the warranty specification.

G. Pavement Repairs

After the EIC and/or RME meet with the Contractor and/or materials supplier to further inspect the defects in pavement, the Department and Contractor will agree to the appropriate repairs to be made.

H. Disputes

In the event there is a dispute between the Contractor and the Department regarding the warranty work, the Contractor should pursue the dispute in accordance with §105-14 *Disputed Work and Dispute Resolution*. Should the Contractor and the Department fail to reach an agreement within a reasonable period (or immediately in the case of emergency conditions) the Contractor must proceed as directed by the Department. If the warranty and subsequent dispute continues, do not process the contract final agreement. After final agreement has been approved, *the Department has no contractual method to pay a Contractor for repairs made to the work*. In the event there is a dispute, the Contractor must keep all bonds and insurance in place until the resolution of the dispute.

EXHIBITS

- A Pre Warranty Work Meeting Check List
- B HMA Pavement Warranty Report
- C Warranted Work Inspection Report

PRE WARRANTY WORK MEETING CHECK LIST

(5/08)

Date 11/2/2015 Contractor Tetra Tech
 Contract No. D262612 Contract Description Exit 15 Route 50 OVER I-87

Attendees:

EIC Jeff Brown Superintendent John Ostrander
 Area Supervisor _____ [] Foreman Rocky Symonds
 Reg Materials Engr Kris Miller Supplier/Plant Rep John Hladik
 [] _____ [] Adam Hershlogg

- ☐ Has Contractors provided required written notification? yes
- ☐ Has Regional Construction Engineer been notified and concurred? yes
- ☐ What warranty specification allows and what it does not allow. yes, covered
- ☐ What documentation is required, and by what party. yes, covered
- ☐ What locations might require Warranty? yes
- ☐ Who will perform Inspections and when will the inspections be conducted? R-1, Construction, Materials
- ☐ How will defects in warranted work be documented? by R-1 Materials
- ☐ What conditions are defined as defects? Per R-1 Materials Standards
- ☐ When/by whom will Contractor be notified whether warranty work is acceptable or defective? R-1, Materials
- ☐ If Defects are Found, what corrective work will be required, and for what defects? Repair per R-1 Material Recommendations
- ☐ How should disputes regarding warranted work be handled? per the Standard spec.
- ☐ When are Bonds required, who determines the amount of the bond, and on what basis?
 Example: For HMA paving, in order to restore warranted work, Work Zone Traffic Control, Hot Mix Asphalt, Milling, Tack Coat, Pavement markings, Loop Detectors, etc. may be required
Contractor provided a list of quantities @ bid price and reviewed by E.I.C.
- ☐ Will warranty affect contract final acceptance? yes.

HMA PAVEMENT WARRANTY REPORT

(5/08)

Sheet 1 of 2
D262612

Paving Date(s): 11/5/15-11/6/15

PAVING CONDITIONS

Day Night
Weather CLEAR
Temperature 45°F+

D262612, PIN 1722.23.303, 321
RTE 50 BRIDGE OVER I-87
SARATOGA COUNTY
CONTR: TETRA TECH CONST.

Location of Work:

Band Value: \$258,291.22

Route No. NYS 50 No. of Lanes 6 Direction NB+SB

Stations: Begin 12+41.08 End 29+50.00

Milepost No.: Begin End

HMA Item No: 402.128202 Mix Type:

Quantity Placed: 1,488.85

Other associated items:

Item No.	Quantity
<u>407.0102</u>	<u>406 GAL</u>
<u>490.10</u>	<u>13,541 SY</u>
<u>619.01</u>	<u>1 LS</u>
<u>619.100101</u>	<u>13,854 LF</u>

Reason(s) for warranty work:

☒ late season paving

☐ early season paving

Warranty Period: Begins 11/6/15 Expires 11/6/16

Scott Ferguson
Signature Date 11/11/15

SCOTT FERGUSON, PM FOR TCI
Contractor

Jeffrey D. Brown
Signature Date 11.17.2015

Jeffrey D. Brown
Engineer-In-Charge

Copies: Regional Construction Engineer
Regional Materials Engineer

WARRANTED WORK INSPECTION REPORT

(5/08)

Sheet 1 of 1

Contract No. D2G2612 Region 1 County Saratoga

Route No. 50 Number of Lanes 6 Direction

Begin: Sta. (MP) 12+41.08 End: Sta. (MP) 29+50.00

Warranty Period: Begins 11/6/15 Expires 11/6/16

DISTRESS	NO	YES	IF YES, DESCRIBE
Corrugations	X		
Slippage Cracks	X		
Raveling (other than occasional aggregate pop outs)	X		
Longitudinal Joint Separation		X	Minor, low severity
Wheel Path Rutting > 6mm		X	Predominantly EB, including left turning lane @ 87 NB ramp.
Pot Holes		X	Already patched. EB right lane
Delamination	X		

Also observed numerous areas of
asphalt bleeding/flushing, mostly in the
EB direction.

Kathy Miller
Signature

8/29/16
Date

RME
Inspector (Title)

Copies: Regional Construction Engineer
Regional Materials Engineer