



National Association of Surety Bond Producers
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BY ELECTRONIC TRANSMISSION (Jordan.Clark @ucf.edu; Lee.Kernek@ucf.edu)

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Jordan P. Clark, Associate General Counsel
Office of the General Counsel
University of Central Florida
4000 Central Florida Blvd.
Orlando, FL 32816

Lee Kernek, Associate Vice President for Facilities and Safety
Administration and Finance Division
University of Central Florida
4000 Central Florida Blvd.
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Re: NASBP Comments on Warranty Provisions in University of Central Florida Contracts

Dear Mr. Clark and Ms. Kernek:

I am contacting you on behalf of the National Association of Surety Bond Producers (NASBP), a national trade association of agencies employing surety bond producers, including licensed resident and nonresident producers placing bid, performance, payment, and maintenance bonds in the State of Florida and all other jurisdictions.

It has recently come to our attention that the University of Central Florida (UCF) is including in its contracts lengthy and excessive warranty periods. Specifically, in Article 10, Warranty Against Water Intrusion & Mold, includes a contractor warranty provision of ten (10) years for "improper construction or installation of defective materials," including "substandard or improperly installed materials or construction work" This language not only requires the contractor to warranty construction work for ten years but also appears to require the contractor to warrant defective materials and substandard materials for ten years. This Article at 10.2 also places liability on the contractor for a design flaw, if the contractor becomes aware of it. This risk-shifting language takes the responsibility for design flaws away from the owner and its design agent and places it improperly in the hands of the contractor.

In Article 11, Additional Warranties, UCF places liability on the contractor for all building components for a minimum of two (2) years. This an improper shifting of risk, as the contractor has no control whatsoever for the building components themselves. These are properly warranted by the manufacturers.

These warranties are of concern not only to the contractor but also to the sureties that might be requested to issue bonds on behalf of such contractors. Article 13.8, General Bond Requirements, provides, in relevant part, that the bonds cover "the full and faithful performance of the Contract"

Lengthy warranty periods, such as those of four (4) years and over, exceed the standard warranty periods for contractors in the United States and will restrict the availability for bonds on such projects. Lengthy warranty periods pose considerable problems from a surety underwriting perspective. Sureties are usually comfortable with issuing bonds for contracts with a warranty obligation of two or three years. Durations longer than two or three years increase substantially the uncertainty regarding underwriting projections about a contractor's future viability. Simply put, sureties cannot gauge the soundness and financial wherewithal of a particular construction company for periods extending too far into the future. A more pragmatic approach would be to specify either a much shorter warranty bond duration, one not to exceed three years, or a one-year warranty bond that would be renewable annually by the surety.

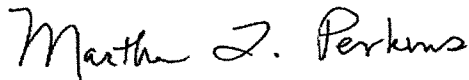
Furthermore, the proposed terms do not adequately separate design issues outside the control of the contractor from the contractor's warranty responsibilities, placing the burden and initial cost on the contractor to differentiate design issues from issues relating to workmanship.

Please note that contracts containing long warranty obligations also reduce competition from the standpoint of eliminating from the bidder/proposal pool all but the largest contractors, since only the largest contractors can shoulder the higher risks inherent in such contracts. Small and medium-sized contractors are effectively precluded, for they are less likely able to qualify for surety credit on such projects. With less competition and a smaller pool of potential bidders, the cost to UCF for its projects will likely be higher.

NASBP respectfully requests that UCF reconsider the contractor warranty requirements, both the length of them, the responsibility for design flaws, and the building component warranties.

Please let me know if you would like to discuss these matters. Thank you for your consideration of NASBP's concerns.

Yours sincerely,

A handwritten signature in cursive script that reads "Martha L. Perkins".

Martha L. Perkins
General Counsel

cc: Mark H. McCallum, CEO