



2-52.1 Bond Rights

WisDOT can require the prime contractor's surety to perform the contract (performance bond) and pay anyone (payment bond) who has a direct contractual relationship with the prime contractor for the labor, services, supplies, materials, plans, or specifications it performed, furnished, or procured for the public improvement.

WisDOT must file an action against the surety within one year of completion of work under the prime contract. Some interpret "action" to mean "lawsuit" rather than merely making a claim. This one-year limitation period does not begin to run when any one subcontract is completed; it applies to the completion of work under the contract as a whole.

WisDOT can recover at least the amount of the bond from the surety. The amount of the bonds is equal to the bid amount of the contract for performance of the work and an equal amount for payment for labor, services, supplies, materials, plans, etc.

2-52.2 When Is "Completion of Work" for Purposes of the Bond?

The bond rights are available for one year following "completion of work" on the prime contract. Completion of work, for purposes of determining when this one-year period begins to run, is most likely substantial completion, but may be later depending on the facts of the project.

Completion of work for this purpose is not the same as final acceptance, nor is it the same as "completion of the contract." Depending on the particular project, completion of work for this purpose may or may not include fine-tuning work, some final maintenance, and repairs. Completion of work most likely does not include paperwork required in the contract (payrolls, etc...). The surety can probably rely upon the "Completion Certificate," discussed in [CMM 2-50](#), as evidence that the owner believes the work is complete for purposes of bond actions.

2-52.3 Warranties

Generally, a warranty is a contractual provision guaranteeing that a particular good or service provided by a contractor will meet the owner's expectations for a particular period of time. A warranty is a separate, additional remedy apart from the performance and payment bond.

Any warranty that will expire within the one year period of the performance bond is duplicative and likely unnecessary. Warranties work well when the acceptability of a contractual item may not be known within one year following completion of the prime contract.

2-52.4 Surety Notification

It is the contractor's responsibility and duty to construct the project in accordance with the contract requirements. Bond costs are an element of each contractor's bid, and it is WisDOT policy that those firms that through their internal quality control and subcontractor quality assurance efforts effectively perform in accordance with contract requirements, without excessive WisDOT oversight or surety involvement, should benefit from lower bond costs. However contractors that fail to consistently meet contract requirements, and therefore generate greater WisDOT oversight and surety notification/involvement, should have this impact reflected in their bond costs.

It is important for WisDOT to notify a surety when there is a significant likelihood that a contractor has not, or will not, complete a contract in substantial compliance with the contract terms and conditions.

The engineer must notify a surety, in writing, in the following situations:

- When a contractor is being considered for termination for default.
- When a contractor is being terminated for default.
- When the engineer has issued a written order to remove and replace or otherwise correct nonconforming work or unauthorized work under [standard spec 105.3.2.2](#) or [standard spec 105.3.2.3](#).

The engineer should consider notifying a surety, in writing, in the following situations:

- When a contractor is significantly behind schedule.
- When a contractor is unable to consistently perform work according to the contract terms and conditions.
- When the engineer has to repeatedly identify work that is unacceptable or not complete under [standard spec 105.11.2.2](#).