



Bulletin

Understanding Manufacturers' Warranties

Introduction

"You shall warrant all materials and workmanship for a period of not less than one year from the date of substantial completion...."

The above is a standard clause in most subcontracts. However, when the standard terms and conditions of most manufacturers' warranties are evaluated, more often than not, the perceived coverage from the manufacturer is often lacking.

The ABC Company, for example, warrants its equipment for either 12 months from startup or 18 months from shipment, whichever occurs first. DEF Corporation warrants its equipment for only 12 months from the date of shipment. When manufacturers are asked about their warranty info, most responses will lie somewhere in between these two examples. One response never heard is "we will warrant all materials and workmanship for a period of not less than one year from the date of substantial completion...."

What's a mechanical contractor to do?

Issues Affecting Warranty Claims

Obviously, negotiating warranty terms up front is the answer, but how many times do we feel the issue is resolved when we send our Purchase Order with our "ironclad"

terms and conditions? The answer is only as good as your relationship with the manufacturer.

More often than not, however, the manufacturer is providing its standard coverage when the contractor thinks his risks are covered which results in a myriad of problems, depending on the situation. If the project is delayed past its original completion date (due to no fault of the contractor), then a delay claim with applicable warranty extensions present the obvious path to resolution. If the owner is the source of the delay, and the general contractor is in your corner, then life is easy.

What happens when things are not so clear? On one recent project, a mechanical contractor installed some large horsepower ventilation fans in the garage basement of a high rise condominium project. Due to accessibility, the fans were installed in month 10 of a 30-month project. The project actually finished two months ahead of schedule, but when the contractor turned on the power in month 26, one of the 75 horsepower motors was malfunctioned. The fan manufacturer claimed the fans were out of warranty, even though the project was still incomplete. The manufacturer cited his standard warranty terms of 12 months from shipment. The contractor's purchase order

was specific on the fans, but did not address warranty terms other than “provide standard one year warranty.” The general contractor did not support the subcontractor’s request for a change order, and the subcontractor was forced to pay for the repairs that he thought were covered in the purchase order. The contractor’s claim that the unit had never been turned on fell on deaf ears as the manufacturer claimed the warranty was tied to the shipping date.

Another issue that could affect warranty start dates is early commissioning of the equipment for temporary construction cooling. More often than not, general contractors have this covered in their contract language, but subcontractors fail to pass it on to the manufacturer. On most projects, major equipment is started up two to six months prior to substantial completion. Depending on the complexity and size of the project, this period could be longer. Yet the result is always the same; the owner and the general contractor expect their warranty to start when the building is accepted and not before.

So back to the original question; what’s a mechanical contractor to do?

Negotiate Up Front

The answer is to negotiate with your vendors and general contractors up front. When equipment is purchased, specify the delivery date and the projected dates for startup and substantial completion so that the vendor has this covered. These matters should be discussed prior to the original estimate so these monies can be budgeted. Otherwise, the vendors will add the monies when terms are discussed.

Should the vendor not address these matters, considering adding additional costs to your bid to cover unanticipated warranty issues.

Either way, one thing is certain. Most

manufacturers will ***not*** offer extended warranties ***after*** the equipment has been started. At that point, the contractor’s risk has increased dramatically.

Involve the General Contractor

Also, be sure to include the general contractors in the negotiations as well. One prominent subcontractor routinely includes in his proposal letter up to 90 days of use and maintenance after equipment start-up prior to the start of all warranties or the date of substantial completion, whichever comes first. This subcontractor succeeds in have this language written into his contract because the general contractor does not have to argue over “construction cooling” when negotiating the terms of the contract. This assumes that the owner’s equipment is allowed to be used for the purposes of construction cooling. When the period between startup and substantial completion exceeds 90 days, which it often does, the subcontractor has an easier time getting paid for additional costs due to negotiations up front.

Conclusion

Like any other insurance, make sure you know the terms of the manufacturer’s warranty for the equipment you purchase.

- Ask thorough questions up front to ensure your lowest exposure.
- Include the general contractor in your negotiations and plan for extensions up front because they may not be available later.
- Hold those responsible for project delays accountable for warranty extensions. You might decide not to pursue “additional costs” with a general contractor when a project finishes four months late only to find out 12 months later that you face a large, unexpected exposure with no recourse.