



OCT 26 2004

GSA Office of the Chief Acquisition Officer

MEMORANDUM FOR RONALD POUSSARD
DIRECTOR
DEFENSE ACQUISITION REGULATIONS COUNCIL

FROM:

LAURIE A. DUARTE
SUPERVISOR
REGULATORY SECRETARIAT

SUBJECT:

FAR Case 2003-029, Powers of Attorney for Bid Bonds

Attached are comments received on the subject FAR case published at 69 FR 51936; August 23, 2004; The comment closing date was October 22, 2004.

<u>Response Number</u>	<u>Date Received</u>	<u>Comment Date</u>	<u>Commenter</u>
2003-029-1	08/23/04	08/23/04	Anthony P. DeStefano
2003-029-2	08/24/04	08/24/04	The Hartwell Corporation
2003-029-3	08/25/04	05/24/04	Julia Perry
2003-029-4	10/19/04	10/19/04	Dan Bagge
2003-029-5	10/07/04	09/24/04	Department of Veterans Affairs
2003-029-6	10/13/04	10/13/04	Ann Sakieli (NAVFAC PAC)
2003-029-7	10/14/04	10/14/04	Mark Woodall Governmental Affairs
2003-029-8	10/19/04	10/19/04	Trina Cobb The Botrell Insurance Agency, Inc.,

<u>Response Number</u>	<u>Date Received</u>	<u>Comment Date</u>	<u>Commenter</u>
2003-029-9	10/18/04	10/18/04	American Agency, Inc.
2003-029-10	10/18/04	10/18/04	Hallmark Associates Insurance Services
2003-029-11	10/18/04	10/18/04	James B. Shea
2003-029-12	10/18/04	10/18/04	Doug Ferris The Botrell Insurance Agency, Inc.
2003-029-13	10/19/04	10/19/04	Peggy Jackosn The Botrell Insurance Agency, Inc.
2003-029-14	10/19/04	10/19/04	The Borgeson Agency, Inc.
2003-019-15	10/19/04	10/19/04	J.D. Kutter Insurance Associates
2003-029-16	10/19/04	10/19/04	C.A. Schutze Agency
2003-029-17	10/19/04	10/19/04	EPA
2003-029-18	10/19/04	10/19/04	Diane M. Jackson
2003-029-19	10/19/04	10/19/04	John Tauer, Cob Strecker Dunphy & Zimmerman
2003-029-20	10/19/04	10/19/04	Amanda Charfauros The Botrell Insurance Agency, Inc.
2003-029-21	10/19/104	10/19/04	AIA, AGC, NASBP, SAA

<u>Response Number</u>	<u>Date Received</u>	<u>Comment Date</u>	<u>Commenter</u>
2003-029-22	10/20/04	10/20/04	Hawaiian Dredging Construction Co., Inc.
2003-029-23	10/20/04	10/20/04	Welsch Flatness & Lutz, Inc.
2003-029-24	10/20/04	10/20/04	Welsch Flatness & Lutz, Inc.
2003-029-25	10/20/04	10/20/04	Engineering Contractors Assoc. of South Florida
2003-029-26	10/21/04	10/21/04	John Bustart
2003-029-27	10/21/04	10/21/04	Dominick Scotto
2003-029-28	10/21/04	10/21/04	Brian Driscoll
2003-029-29	10/21/04	10/21/04	James A. Gravning
2003-029-30	10/21/04	10/21/04	Jerry Hay, Inc. Bond Dept.
2003-029-31	10/21/04	10/21/04	Cellina Uyeunten
2003-029-32	10/21/04	10/21/04	Jack Wolfe Insurance, Inc.
2003-029-33	10/22/04	10/22/04	Schwartz Brothers Insurance Agency
2003-039-34	10/22/04	10/22/04	Ryan Fernandez
2003-039-35	10/22/04	10/22/04	Minard-Ames Insurance Group

<u>Response Number</u>	<u>Date Received</u>	<u>Comment Date</u>	<u>Commenter</u>
2003-029-36	10/22/04	10/22/04	First Insurance Company of Hawaii
2004-029-37	10/22/04	10/22/04	The Cashion Company, Inc.
2004-029-38	10/22/04	10/22/04	Whit Campbell
2003-029-39	10/22/04	10/22/04	Fisher-Brown, Inc
2003-029-40	10/22/04	10/22/04	Curtin International
2003-029-41	10/22/04	10/22/04	ABC
2003-029-42	10/26/04	10/26/04	Hart & Shinohara, LLP
2003-029-43	10/26/04	10/22/04	InterWest Insurance Services, Inc.
2003-029-44	10/26/04	10/22/04	Griffing Sean & Lai Insurance Brokers, Inc.
2003-029-45	10/26/04	10/22/04	Frank Wirt (AFSB)
2003-029-46	10/26/04	10/22/04	Fuller & O'Brien, Inc.
Attachments			

2003-029-1



Adestefano2@aol.com

08/23/2004 08:19 PM

To: farcase.2003-029@gsa.gov

cc:

Subject: Facsimile Power of Attorney for Bonds

Ladies and Gentlemen:

I am very pleased to have this opportunity to respond to this FAR Case 2003-029 regarding powers of attorney for bid bonds. While I concur with the effort to effect the legality of facsimile and other devices for conveying the powers of attorney, I do not necessarily concur that failures in the power of attorney should effect responsibility rather than responsiveness. My primary cause for concern relates to situations where a small business contractor obtains a Certificate of Competency from the Small Business Administration. I am concerned that such a certificate would negate deficiencies in the bid bonds and the power of attorney related to them. As a long time contract specialist with the U.S. Army Corps of Engineers, we considered failures in all bonding documents to be related to responsiveness, not responsibility. This derives from the premise that the bid, performance and payment bonds are required in the solicitation documents and are required therefrom. As a result, a failure to provide each, along with related powers of attorney, relate to a solicitation requirement causing the contractor to be nonresponsive not nonresponsible.

As always, thank you for this opportunity to respond.

Anthony P. DeStefano, CPA, CFCM
1200 S. Courthouse Rd. #726
Arlington, VA 22204
703-979-1611

2003-029-2



"Doug Ball"
<doug@thehartwellcorp.com>

To: farcase.2003-029@gsa.gov
cc:
Subject: Far case 2003-029

08/24/2004 06:28 PM

I am very much in favor of the proposed change to the FAR's regarding the power of attorney and original "wet" signature issue. I work as a surety bond agent or broker with many construction firms, several of whom are disadvantaged and almost all of whom are small businesses. The requirement of "wet" signatures has become very cumbersome, especially for the smaller surety clients and in several situations has delayed the execution of the bonds to the point that the bid was almost too late for the bid opening time frame. I have been in this industry for almost 30 years and my experience tells me that the sureties are much more aware of the need for control of their power of attorney forms than they have ever been. This increased control should result in very few problems to the government because of unauthorized signatures on bonds. For the sake of small businesses and contractors in our country and ultimately for the benefit of the tax payer I highly suggest that this change be implemented as quickly as possible.

Doug Ball

Douglas G. Ball, CPCU
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(208) 524-5721 fax
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doug@thehartwellcorp.com

2003-029-3



"Perry, Julia"
<Julia.Perry@fhwa.dot.gov>

To: farcase.2003-029@gsa.gov
cc:
Subject: FAR Case 2003-029

08/25/2004 11:12 AM

I am an attorney with the Federal Highway Administration and Counsel to the Eastern Federal Lands Highway Division. I am very interested in the Proposed Rule regarding Powers of Attorney for Bid Bonds because we have had numerous problems in determining the validity of a Power of Attorney. I agree with the proposed change, but feel that it needs a clarification. As drafted, the matter is only one of responsiveness if a Power of Attorney is not submitted. I would suggest that it also be a matter of responsiveness if it is clear from the Power of Attorney that it is invalid. We have received Powers of Attorney that indicate on their face that they have expired, or that do not name the individual who signed the Bid Bond. If addressing these situations is made a matter of responsibility, it would cause additional work and hardship on the Agency.

2003-029-4



"Bagge, Dan (Bond,
Bond HO)"
<Dan.Bagge@thehartfo
rd.com>

To: "farcase.2003-029@gsa.gov" <farcase.2003-029@gsa.gov>
cc: "Bagge, Dan (Bond, Bond HO)" <Dan.Bagge@thehartford.com>
Subject: FAR Case 2003-029

10/19/2004 09:48 AM

We support the changes suggested by the coalition consisting of NASBP, AIA, AGC and SAA clarifying requirements for powers of attorney accompanying bid bonds for federal contracts.

Thank you,

Dan Bagge
The Hartford
#504-889-1141

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DEPARTMENT OF VETERANS AFFAIRS
DEPUTY ASSISTANT SECRETARY FOR ACQUISITION AND MATERIEL MANAGEMENT
WASHINGTON DC 20420

2003-029-5

SEP 24 2004

General Services Administration
Regulatory Secretariat (V)
1800 F Street NW, Room 4035
Attn: Laurie Duarte
Washington, DC 20405

To Whom It May Concern:

This is in response to Proposed Rule RIN 9000-AK01, FAR Case 2003-029, Powers of Attorney for Bid Bonds. The Department of Veterans Affairs supports this proposed rule, but recommends that clarification be added regarding determinations of responsibility.

Proposed section 28.101-3(c)(2) will require that questions regarding the authenticity and enforceability of the power of attorney shall be treated as matters of responsibility. While we fully support this requirement, we recommend that a statement be added that "Subpart 19.6 does not apply to determinations of responsibility of sureties or on the acceptability of powers of attorney."

The Comptroller General has ruled on the role of the Small Business Administration (SBA) relative to the responsibility of individual sureties. In Clear Thru Maintenance, Inc. B-203608, 61 Comp. Gen. 456, June 15, 1982 (copy enclosed), the Comptroller General found that there was no indication that Congress ever intended the Small Business Act to bring the qualifications of individual sureties under the scrutiny of SBA and that such determinations need not be referred to SBA under the Certificate of Competency procedures. This determination was reinforced in Allied Production Management Co., Inc., B-237126, December 22, 1989 (copy enclosed). The same reasoning should also apply to determinations of responsibility of corporate sureties and the acceptability of powers of attorney.

Please direct any questions concerning the above comments to Mr. Don Kaliher, Acquisition Policy Division, Department of Veterans Affairs, at (202) 273-8819. Thank you for your consideration of this recommendation.

Sincerely yours,


David S. Berry

Enclosures: 2

Read
10/07/04

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5 of 5 DOCUMENTS

Matter of: Allied Production Management Co., Inc.

B-237126, B-237134, B-237370

Comptroller General of the United States

1989 U.S. Comp. Gen. LEXIS 1497; 89-2 Comp. Gen. Proc. Dec. P587

December 22, 1989

HEADNOTES:

[*1]

1. Low bids were properly rejected on the basis that individual bid bond sureties were unacceptable where their Affidavits of Individual Surety contained gross inconsistencies, misstatements and omissions of essential information, and where the contracting officers had a reasonable basis to question the accuracy and sufficiency of the surety's evidence of financial acceptability and net worth.

2. Nonresponsibility determination based on unacceptability of required individual bid bond sureties need not be referred to the Small Business Administration for review under the Certificate of Competency procedures, since such determinations are based solely on the qualifications of the surety, not the small business offeror.

OPINION:

DECISION

Allied Production Management Co., Inc., a small business, protests the rejection of its bids under three invitations for bids (IFBs) n1 issued by the United States Navy, for alterations and repairs to pool lockers and an indoor swimming pool at the Naval Regional Medical Center, Oakland, California; for site preparation at the Point Mugu Naval Air Station, Point Mugu, California; and for the expansion of the commissary at the Naval Station, Pearl Harbor, [*2] Hawaii. The Navy rejected Allied's bids because its individual bid bond sureties were non responsible.

n1 IFB Nos. N62474-86-B-0645; N62474-89-B-6782; and N62471-88-B-1324.

We deny the protests.

The IFBs required bidders to submit bid bonds in amounts equal to 20 percent of the bid prices. In the event the required bid bond named individuals as sureties rather than a corporation, two or more responsible sureties were required to execute the bid bond, and the bidder was required to provide a completed Standard Form (SF) 28, Affidavit of Individual Surety, setting forth financial information for each individual. The SF 28 includes a Certificate of Sufficiency that must be executed by specified bank officers or government officials.

Bids under IFB No. N62474-86-B-0645 (IFB No. 0645) were opened on August 29, 1989; bids under IFB No. N62474-89-6782 (IFB No. 6782) were opened on September 1; and bids under IFB No. N62471-88-B-1324 (IFB No. 1324) were opened on September 12. Allied submitted the apparent low bid in each case. In response to the requirements of each IFB, Allied submitted bid bonds guaranteed by the same two individual sureties, Anthony M. Kaufman and John J. Sullivan, [*3] whose fully-executed Certificates of Sufficiency accompanied each SF 28.

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By letters dated September 12, concerning IFB Nos. 0645 and 6782, and September 27, concerning IFB No. 1324, the Navy determined that Allied's bids were unacceptable because its individual bid bond sureties were nonresponsible. The contracting officers' determinations regarding IFB Nos. 0645 and 6782 were based on a finding that each of the affidavits and accompanying financial statements for Kaufman and Sullivan contained unexplained gross inconsistencies, procedural discrepancies and material omissions. With regard to IFB No. 1324, the contracting officer found that Kaufman and Sullivan failed to provide evidence in support of their net worths and failed to disclose all outstanding bond obligations, rendering the contracting officer incapable of making an affirmative finding of sufficiency of net worth to support the bid bond. Based on the affidavits and other information available to them, the contracting officers determined that their findings raised questions about the credibility and integrity of the individual sureties and the auditors who prepared the financial reviews sufficient to render Kaufman and [*4] Sullivan unacceptable.

On September 26, Allied protested the rejection of its bids under IFB Nos. 0645 and 6782; on October 10, Allied protested the rejection of its bid under IFB No. 1324. With regard to IFB Nos. 0645 and 6782, Allied argues that the Navy 1) improperly rejected the individual sureties as nonresponsible because Allied provided sufficient financial information to permit the agency to conclude that each surety had a net worth in excess of the penal amount of the bond; 2) inadequately reviewed the SF 28s and supporting documentation; and 3) improperly evaluated the apparent discrepancies and inconsistencies between the net worths reported in the SF 28s. Allied relies on FAR § 14.407-7(b) to argue that the Navy improperly failed to list the reasons for rejecting its bid under IFB No. 1324. n2

n2 Allied also argues that the Navy improperly awarded the contract to another firm at Allied's lower bid price. However, the Navy indicates that Allied's lower bid price was inaccurately stated as the award price in the rejection letter, as the contract was properly awarded at the awardee's bid price.

In its comments on the Navy's report to our Office, Allied also argues [*5] for the first time that the Navy improperly failed to seek more information about the individual sureties and improperly failed to inquire about other bid bond obligations not listed on the SF 28. Allied asserts that the Navy did not make an independent determination concerning the individual sureties' responsibility, relying instead on determinations made by other government sources, who also found Kaufman and Sullivan unacceptable individual sureties. Finally, Allied argues that the Navy improperly failed to refer the three cases to the Small Business Administration (SBA) for a Certificate of Competency (COC) determination.

The accuracy and sufficiency of the information in the SF 28 to establish the sureties' financial acceptability is a matter of responsibility which may be based on information submitted prior to award; no award may be made without an affirmative determination of responsibility. *Cascade Leasing, Inc.*, B-231848.2, Jan. 10, 1989, 89-1 CPD para. 20. Because the purpose of the bonding requirement is to provide the government with a financial guarantee, information which calls into question the sureties' integrity and the credibility of their representations [*6] in connection with the procurement diminishes the likelihood that the guarantee will be enforceable, and may be considered by the agency in determining the sureties' acceptability. *Ware Window Co., et al.*, B-233367 et al., Feb. 6, 1989, 89-1 CPD para. 122. Contracting officers are vested with a wide degree of discretion and business judgement when making an acceptability determination, and our Office will defer to the contracting officer's decision unless the protester can demonstrate that the determination was made in bad faith or without a reasonable basis. *Allied Production Mgmt. Co., Inc.*, B-235686, Sept. 29, 1989, 89-2 CPD para. 297. Based on our review of the record, we find that the contracting officers' determinations here were reasonable in each case.

On the SF 28s for IFB No. 0645, dated July 21, Kaufman claimed a net worth of \$ 559,109,615 and Sullivan claimed a net worth of \$ 559,325,704. Unaudited financial reviews reflecting each surety's financial condition shows that the bulk of both their net worths as of April 30, 1989, was a 24.5 percent interest each in GTL Investments, Inc., of Costa Mesa, California. The contracting officer's investigation revealed [*7] that the California Secretary of State suspended GTL's corporate status on May 16, 1988. Stock certificates submitted with the record show that Kaufman and Sullivan acquired their GTL interests in February, 1989, after the suspension. n3

n3 GTL's balance sheet shows assets that include Convair 880 jets at an alleged fair market value of \$ 15,000,000. However, the Federal Aviation Administration indicated that the jets are of doubtful value since they cannot be operated in the United States because they do not comply with anti-noise pollution statutes.

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The GTL balance sheet was completed by Donald E. Phillips, identified as a Certified Public Accountant (CPA) in California, and the financial reviews of the individual sureties submitted for IFB Nos. 0645 and 6782 were prepared by Martin Schwartz, identified as a CPA with Schwartz Financial Services, of La Mesa, California, and signed over the name of Martin Schwartz & Associates. The contracting officer's investigation revealed that no such companies or individuals were registered with the California State Bureau of Accountancy. In any event, the CPA review supported net worths equal to only 10 percent of the amounts claimed by [*8] the sureties on the SF 28s submitted for IFB No. 0645.

Contrary to their previously declared net worths under IFB No. 0645, on their SF 28s for IFB Nos. 1324 and 6782, Kaufman claimed a net worth of \$ 61,451,385, while Sullivan claimed a net worth of \$ 68,485,254. Although Allied did not explain the gross disparities between these net worths and the net worths previously reported on the SF 28 for IFB No. 0645, Allied now argues that the financial statements supporting the affidavits were prepared 3 months apart, and thus the apparent inconsistencies between net worths actually reflected divestiture and reallocation of investments by Kaufman and Sullivan during the period between statements. We are not persuaded by this argument.

In our view, the contracting officers reasonably determined that the unexplained omission from the SF 28s for IFB Nos. 1324 and 6782 of almost a billion dollars of combined assets after a period of less than 2 months raised serious questions as to the acceptability and credibility of Kaufman and Sullivan as individual sureties. Moreover, based on the questionable professional status of the CPAs who prepared the unaudited financial statements, the contracting [*9] officers reasonably determined that the net worths stated on the financial reviews were speculative at best, and reasonably questioned the accuracy of the sureties' financial representations.

Further inconsistencies and omissions exacerbated rather than allayed the contracting officers' concerns regarding the sureties' net worths. On the SF 28 for IFB No. 0645, Sullivan claimed sole ownership of a vacation home in Mexico at a reported fair market value of \$ 250,000, which was admittedly leased from its actual owner, a Mexican bank. Similarly, Kaufman claimed sole ownership of a residential home located in Mission Viejo, California on the SF 28s submitted with each of Allied's three bids. The reported fair value of that property varies from \$ 547,000 to \$ 799,800, with Kaufman claiming from \$ 139,000 to \$ 330,200 in equity on the three SF 28s.

Furthermore, a comparison of the outstanding bid bond obligations submitted by the two sureties also revealed material omissions. The contracting officers discovered that the sureties listed the identical 48 outstanding bond obligations on which they were liable at the time they executed their SF 28s for IFB No. 0645. Kaufman listed no outstanding [*10] bid bond obligations on the SF 28 for IFB No. 1324, and listed 60 bid bond obligations on a fourth affidavit submitted in connection with another recent Navy IFB not under consideration here. n4 In addition, Kaufman and Sullivan failed to include on their SF 28 for IFB No. 6782 the bid bond for which they were obligated on IFB No. 0645, and listed only 8 of the 48 outstanding bond obligations they listed on the SF 28s for IFB No. 0645. Further, contrary to the IFB requirements, of the bid bond obligations disclosed, the sureties failed to list all of the amounts for which they were liable. We have held that all outstanding bond obligations must be disclosed, regardless of the actual risk of liability on those obligations, to enable the contracting officer to make an informed judgment of the sureties' financial soundness. Jerry Eaton, Inc., B-233458, Jan. 24, 1989, 89-1 CPD para. 71.

n4 IFB No. N62471-86-B-1361.

Here, the sureties' material omissions rendered the contracting officers incapable of making that judgment.

In addition to rendering the contracting officers unable to make an informed judgment regarding their net worths and financial soundness, the sureties made [*11] it difficult if not impossible to verify the sufficiency of their assets. The sureties' Certificates of Sufficiency for IFB No. 0645 were signed by Bradley E. Bagge of Peninsula First Financial Corporation, while Patrick Murphy, President of Millennium Management Services, Ltd., signed the Certificates of Sufficiency for IFB Nos. 1324 and 6782. The contracting officers determined that Peninsula was not an acceptable financial corporation in accordance with the requirements of the certificate, and a telephone call to the company to verify its status revealed that the telephone had been disconnected. Communications with the Office of the Commissioner of Financial Institutions, Department of Commerce, of the State of Nevada, revealed that, while

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incorporated in Nevada, Millennium was not licensed as a trust company in that state, and therefore was not an acceptable party to sign the Certificate of Sufficiency.

Allied argues that the contracting officer acted unreasonably in rejecting its sureties because even discounting any omitted bid bond obligations, each surety provided sufficient financial information to show a net worth in excess of the penal amount of the bonds. We disagree. [*12] Once the accuracy of the sureties' representations reasonably has been called into question, the agency is justified in rejecting the sureties, notwithstanding the adequacy of other assets. Hughes & Hughes, B-235723, Sept. 6, 1989, 89-2 CPD para. 218. This reflects the great reliance an agency is entitled to place on the accuracy, thoroughness, and verity of surety financial information provided for government procurements. See Farinha Enters., Inc., B-235474, Sept. 6, 1989, 68 Comp. Gen. , 89-2 CPD para. . Based on the information submitted, the contracting officers were justified in rejecting the sureties in this case.

We also find unpersuasive Allied's argument that the Navy based its determination on an inadequate review of the financial positions of each surety and that it failed to make an independent determination of responsibility concerning Kaufman and Sullivan. We have specifically held that a contracting officer may rely on the initial and subsequently furnished information regarding net worth submitted by a surety, without further conducting an independent investigation. See KASDT, Corp., B-235620, Aug. 21, 1989, 89-2 CPD para. 162. Contrary [*13] to Allied's assertions that the Navy automatically rejected its bids without examining the financial conditions of the sureties, the record shows the contracting officers went well beyond the documents submitted in attempting to determine the responsibility of each surety. In addition to examining and comparing the financial statements, the contracting officers contacted other government sources who provided additional information bearing directly on the responsibility of the individual sureties. In our opinion, the contracting officers reasonably determined that the gross unexplained inconsistencies in net worths, omissions of bid bond obligations, and misstatements about ownership and value of assets called into question the sureties' integrity and the credibility of their representations, thereby diminishing the likelihood that the sureties' financial guarantee would be enforceable. This determination provided a proper basis for rejecting the sureties. Farinha Enters., Inc., B-235474, supra.

To the extent that Allied relies on FAR § 14.407-7(b) to argue that the Navy improperly failed to list the reasons for rejecting its bid under IFB No. 1324, that reliance is misplaced. [*14] FAR § 14.407-7(b) is a directive to the contracting officer to document in the contracting file cases where the award is not made to the low bidder. The record shows that this requirement was complied with in this case.

Finally, Allied argues that the Navy improperly failed to refer the cases to the SBA for a COC determination. when the determination that a bidder is nonresponsible is based solely on the unacceptability of its sureties, the determination need not be referred to the SBA, since such determinations are based solely on the qualifications of the surety, not the small business offeror. *Clear Thru Maintenance, Inc.*, 61 Comp. Gen. 456 (1982), 82-1 CPD para. 581; *Cascade Leasing, Inc.*, B-231848.2, supra.

The protests are denied.

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LEXSEE 61 COMP. GEN. 456

MATTER OF: Clear Thru Maintenance, Inc.

B-203608

Comptroller General of the United States

61 Comp. Gen. 456; 1982 U.S. Comp. Gen. LEXIS 859; 82-1 Comp. Gen. Proc. Dec. P581

June 15, 1982

HEADNOTES:

[*1]

1. Agency's requirement that both individual sureties on a bid bond have net worths in excess of their total outstanding surety obligations in order to be deemed acceptable sureties is unobjectionable since it is reasonably related to the purpose for which a bid guarantee is intended, namely, to protect the Government's financial interest in the event of default on the bid.

2. Questions concerning an individual surety's financial acceptability are matters of responsibility rather than responsiveness.

3. Although questions concerning an individual surety's acceptability are matters of responsibility, a bidder may not after bid opening substitute an acceptable individual surety for one deemed unacceptable because such a substitution would alter the sureties' joint and several liability under the bid bond, the principal factor in determining the bid's responsiveness to the bid guarantee requirement.

4. Bidder nonresponsibility determinations based on the unacceptability of an individual surety on a required bid bond need not be referred to the Small Business Administration (SBA) for review under the Certificate of Competency procedures; such determinations are based solely [*2] on the qualifications of the individual surety and there is no indication that Congress intended the Small Business Act to bring surety qualifications under the scrutiny of SBA.

OPINION:

Clear Thru Maintenance, Inc. protests the award of a contract to Suburban Industrial Maintenance under invitation for bids (IFB) No. GS-03-81-B-0054, issued by the General Services Administration (GSA) for custodial services at the Social Security Payment Center in Philadelphia, Pennsylvania. The protest stems from the rejection of Clear Thru's bid as nonresponsive based on the financial inadequacy of one of the individual sureties listed on Clear Thru's bid bond. GSA takes the position that, contrary to a number of our decisions, the question of surety acceptability relates to bid responsiveness rather than responsibility. The agency further maintains that notwithstanding whether the issue is one of responsiveness or responsibility, its method of determining the surety unacceptable was reasonable.

We agree with GSA that its evaluation of the surety's net worth was reasonable. We do not agree, however, that the issue of surety acceptability is a matter of bid responsiveness.

Clear Thru submitted the [*3] low bid while Suburban's bid was second low of the eleven bids opened on May 1, 1981. The solicitation required that a bid guarantee in the amount of 20 percent of the total one year bid price be submitted with each bid. Clear Thru complied with this requirement, submitting a bid bond listing two individual sureties. The penal amount of the bond was \$83,809.20. The affidavits of Individual Surety (Standard Form 28),

029-5

52 Comp. Gen. 223 (1972). GSA's requirement that both sureties have net worths at least equal to their total surety obligations clearly is calculated to achieve this purpose. While we agree with the protester that the strictness of GSA's standard may make it more difficult for some bidders to secure adequate bonding, this speculation alone does not support a conclusion that the standard is unreasonable. We note again that the corresponding DAR provision specifically calls for the contracting officer to deduct the total of the surety's other bonding obligations from its net worth. See DAR § 10-201.2.

GSA has raised the question whether surety acceptability relates to bid responsiveness or bidder responsibility. GSA maintains it is a matter of responsiveness and that Clear Thru's bid was thus properly rejected once the contracting officer determined that one of the individuals was an unacceptable surety. GSA argues in the alternative that Clear Thru would have been rejected as nonresponsive in any event since the individual's surety [*9] obligations exceeded his net worth on the date of award. GSA submits further that, regardless of our determination as to this acceptability issue, both sureties' failure here to list numerous outstanding obligations as required under item 10 of the surety affidavit was an appropriate factor for consideration in the surety acceptability determination.

We disagree with GSA's view that the determination of an individual's acceptability as a surety on a bid bond is a matter of responsiveness. The test to be applied in determining the responsiveness of a bid is whether the bid as submitted is an offer to perform without exception, the exact thing called for in the invitation, and upon acceptance will bind the contractor to perform in accordance with all the invitation's material terms and conditions. 49 Comp. Gen. 553, 556 (1970). This determination of responsiveness must be made from the bid documents at the time of bid opening. Peter Gordon Company, Inc., B-196370, July 18, 1980, 80-2 CPD 45. We have held that a solicitation provision calling for a bid guarantee is a material requirement which cannot be waived. 38 Comp. Gen. 532 (1959). We have also recognized that a bid is [*10] nonresponsive where either the required bond is not submitted, de Weaver and Associates, B-200541, January 6, 1981, 81-1 CPD 6, or the submitted bond contains a deficiency which detracts from the joint and several liability of the sureties on the bond. See Structural Finishing, Inc., B-201614, April 21, 1981, 81-1 CPD 303, and Southland Construction Co., B-196297, March 14, 1980, 80-1 CPD 199 (bid nonresponsive where bond was altered without any evidence of approval by the surety); Cassidy Cleaning, Inc., B-191279, April 27, 1978, 78-1 CPD 331 (blank bid bond submitted).

The bid bond furnished by Clear Thru at bid opening was duly executed by two individual sureties whose affidavits indicated that they both had net worths at least equal to the penal amount of the bond, and was not otherwise defective on its face. The bond thus met the solicitation's bonding requirement and was legally sufficient to establish the joint and several liability of the sureties in the event of default on the bid by Clear Thru.

In our decision at 52 Comp. Gen. 184 (1972), recognizing that the failure of an individual surety to show on its surety affidavit at bid opening a net [*11] worth at least equal to the penal sum of the bid bond did not detract from the joint and several liability of the sureties, we stated--

"* * * the matter of the net worth of an individual surety on a bid bond is not one relating to the responsiveness of a bid but rather to the responsibility of the surety. The fact that an affidavit of an individual surety either has not been filed timely or has been filed timely but discloses assets insufficient to cover the penal amount of the bond does not affect the actual net worth of the surety. Since completion of the surety affidavit is solely for the benefit of the Government to disclose facts concerning the responsibility of the surety, we see no reason why contracting officials should not be able to ascertain, after bid opening but subject to the time restraints of the procurement, the acceptability of an individual surety based on required net worth. * * *"
52 Comp. Gen. 184, 187.

In the instant case, the individual surety showed a sufficient net worth on his affidavit at bid opening and was found unacceptable only because after bid opening the agency determined that he had other bonding obligations not listed in his affidavit to [*12] the extent that his total obligations exceeded his net worth. This clearly was a matter of responsibility. See also Jets, Inc., B-194017, April 16, 1979, 79-1 CPD 269; Cassidy Cleaning, Inc., supra; Jets Services, Inc., et al., supra.

Although acceptability of an individual surety, as a matter of responsibility, ordinarily may be established, time permitting, any time prior to award, Henry Spen & Company, Inc., B-183164, January 27, 1976, 76-1 CPD 46, replacement of an unacceptable surety after bid opening is not an allowable means for achieving this end. Such a substitution necessarily would alter the joint and several liability of the sureties under the bid bond, the principal factor in determining the responsiveness of the bid to the guarantee requirement. Elements of a bid which go to the bid's

029-5

responsiveness cannot be changed after bid opening. *S. Livingston & Son, Inc., 54 Comp. Gen. 593 (1975)*, 75-1 CPD 24. We therefore agree with GSA's refusal to permit the surety substitution proposed in this case.

GSA asks whether bidder nonresponsibility determinations based on the unacceptability of an individual surety must be referred [*13] to the Small Business Administration (SBA) under the Certificate of Competency (COC) procedure. 13 C.F.R. § 125.5 et seq.; FPR § 1-1.708.1. We do not believe such a referral is required. The Small Business Act was amended in 1977 (Pub. L. 95-89) to broaden the concept of "responsibility" for which SBA was to certify small businesses. Prior to 1977, SBA certification was limited to matters involving a bidder's capacity or credit. The Act, as amended, empowers SBA--

"* * * To certify to Government procurement officers, * * * with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity, of any small business concern * * * to receive and perform a specific Government contract. A Government procurement officer may not, for any reason specified in the preceding sentence preclude any small business concern * * * from being awarded such contract without referring the matter for a final disposition to the Administration."

Although the language of this provision is quite broad, it does not appear to encompass the rejection of an otherwise responsible bidder based solely on the [*14] unacceptability of a proposed individual surety. Indeed, as the Court of Claims noted in a recent decision, the legislative history of the amendment indicates that this provision was enacted by Congress to abate continuing discrimination against small businesses "solely because of their smallness and disabilities allegedly resulting from that fact." *Siller Brothers, Incorporated v. United States, 655 F.2d 1039, 1044 (Ct. Cl. 1981)*, petition for cert. filed (No. 81-1216). Congress' intent is clearly reflected in the concerns raised in the House Report on the 1977 amendment:

"* * * Small business can and has been denied Government contracts because the procuring activity has determined that the small business lacked the requisite 'tenacity, perseverance or integrity' to perform a specific Government contract. Such a finding results in the small firm being branded 'nonresponsible.' Resort to the COC procedure in such cases is not available since capacity and credit are, purportedly, not involved. * * *"
H.R. Rep. No. 95-1, 95th Cong., 1st Sess. 13, reprinted in [1977] U.S. Code Cong. & Ad. News 821, 833.

While rejection of a bidder due to the inadequacy of a proposed [*15] individual surety is, technically, a matter of responsibility, the bidder itself is in no way "branded" since such determinations are based exclusively on the qualifications of the surety. We find no indication that Congress ever intended the Small Business Act to bring the qualifications of individual sureties under the scrutiny of SBA, and SBA's regulations do not specifically address the point. We accordingly conclude that such determinations need not be referred to SBA under the COC procedure.

The protest is denied.

2003-029-6



"Sakieli, Ann H CIV
NAVFAC PAC "
<ann.sakieli@navy.mil
>

To: farcase.2003-029@gsa.gov
cc:
Subject: FAR case 2003-029

10/13/2004 08:40 PM

Proposed rule indicates authenticity and enforceability of the power of attorney (POA) will be treated as a matter of responsibility. In the event that the POA cannot be authenticated, will the contracting officer have to refer the matter to the SBA for a certificate of competency if the bid was submitted by a small business concern? Or will the proposed rule also change Part 19 to indicate COC is not required for defective POA?

2003-029-7



"Woodall, Mark"
<woodall@agcga.org>
10/14/2004 04:25 PM

To: "farcase.2003-029@gsa.gov" <farcase.2003-029@gsa.gov>
cc:
Subject: FAR Case 2003-029 - Powers of Attorney For Bid Bonds

To Whom It May Concern: .

On behalf of the Georgia Branch, Associated General Contractors and our 600 plus company members, I would like to register our support of the proposed changes in FAR Case 2003-029 (Powers of Attorney For Bid Bonds). This proposed FAR revision would be beneficial to contractors seeking federal contracts, as it would help eliminate a conflict in the interpretation of the requirements for valid bid bonds on federal contracts.

We believe that this conflict could be even further clarified by adding the following language under Section (c):

28.101-3 Authority of Attorney-In-fact for a Bid Bond.

(c) (3) When assessing the authenticity and enforceability of the power of attorney, treat a digital, mechanically applied or printed signature(s) and date(s) on the power of attorney as valid.

Thank you for the opportunity to submit these comments for your consideration.

Respectfully submitted,
Mark Woodall
Director, Governmental Affairs
Georgia Branch, AGC
1940 The Exchange
Atlanta, GA 30339
678.298.4116 Fax: 678.298.4117
www.agcga.org
woodall@agcga.org

2003-029-8



tcobb@bottrell.com
10/19/2004 09:30 AM

To: farcase.2003-029@gsa.gov
cc:
Subject: FAR Case 2003-029

We support the changes suggested by the coalition consisting of NASBP, AIA, AGC and SAA clarifying requirements for powers of attorney accompanying bid bonds for federal contracts.

Trina Cobb
The Bottrell Insurance Agency, Inc.
(601) 960-8237 (Direct Line)
(601) 960-8247 (Fax)

2003-029-9



"Terry Starks"
<TerryS@americanage
ncymn.com>

To: farcase.2003-029@gsa.gov
cc: rfoss@nasbp.org
Subject: Proposed new rule on powers of attorney required with bid bonds

10/18/2004 04:47 PM

Gentlemen,

I have seen the proposed revised rule on power of attorney requirements included in the 8-23-04 Federal Register.

I feel the changes are a step in the right direction.

I suggest that these be improved by adding the changes recommended by the NASBP, SAA, AGC, and AIA; specifically, deleting "signed and dated" in (c)(1), and adding a new subpart (d) stating "For purposes of this section, electronic, mechanically-applied and printed signatures, seals and dates on the power of attorney shall be considered original signatures, seals and dates, with regard to the order in which they are affixed".

Thank you.

Terry Starks
American Agency, Inc.
5851 Cedar Lake Road
P O Box 16527
Minneapolis, MN 55416-0527
Phone: 952-591-2755
FAX: 952-542-7500
terryst@americanagencymn.com

2003-029-10



"Tom Tyrell"
<ttyrell@Hallmark-ins.com>

To: farcase.2003-029@gsa.gov
cc:
Subject: FAR Case 2003-029

10/18/2004 04:59 PM

I support the proposed rule Section 28.101-3 Authority of an Attorney-in-Fact for a Bid Bond to Part 28-Bonds and Insurance published in the August 23, 2004 Federal Register with the following slight changes:

Delete the words "signed and dated" in (c) (1) and to add a new subpart (d) to clarify the use of electronic, mechanically-applied and printed signatures, seals and dates. The changes are reflected in the following language:

(a) Any person signing a bid bond as an attorney-in-fact shall include with the bid bond evidence of authority to bind the surety.

(b) An original, or a photocopy or facsimile of an original, power of attorney is sufficient evidence of such authority.

(c) The contracting officer shall --

(1) Treat the failure to provide a signed and dated power of attorney at the time of bid opening as a matter of responsiveness; and

(2) Treat questions regarding the authenticity and enforceability of the power of attorney at the time of bid opening as a matter of responsibility. These questions are handled after bid opening.

(d) For purposes of this section, electronic, mechanically-applied and printed signatures, seals and dates on the power of attorney shall be considered original signatures, seals and dates, without regard to the order in which they are affixed.

Removing the "signed and dated" requirement from the proposed rule makes it apparent that the contracting officer (CO) has clear and unequivocal authority to accept even a questionable power of attorney as "responsive" and address questions about the validity of the power of attorney after the bid.

The new subpart (d) is designed to make sure that the manner and order in which signatures, seals, and dates are affixed to the power of attorney does not result in the rejection of low bids. The language broadly includes as original powers of attorney those documents that are mechanically signed or contain printed or electronic signatures, seals, and dates. Contracting officers will no longer have the discretion to reject a bid on grounds that the power of attorney did not contain a handwritten signature.

These modifications are consistent with language being submitted by a coalition of the National Association of Surety Bond Producers, The Surety Association of America (SAA), the Associated General Contractors of America (AGC), and the American Insurance Association (AIA).

Thomas H. Tyrell
Vice President
Hallmark Associates Insurance Services
8337 Telegraph Road, Suite 200
Pico Rivera, CA 90660
Ph: 562-776-4251
Fx: 562-776-0075
email: Ttyrell@hallmark-ins.com

2003-029-11



"Jim Shea"
<Jim_Shea@acordia.com>

To: farcase.2003-029@gsa.gov
cc:
Subject: Changes to the Power of Attorney rules

10/18/2004 05:24 PM

As a member in good standing with the National Association of Surety Bond Producers, I would like to concur with the recommendations made by our organization with regard to the rules governing the authenticity of powers of attorney. By allowing the final determination of the validity of a power of attorney to be determined after the bid opening, minor mistakes made by a bond clerk will not result in a public entity paying more for a project by rejecting an otherwise responsible low bid.

Very truly yours,

James B. Shea, CPA
Vice President
Acordia of California

2003-029-12



dferris@bottrell.com

10/18/2004 06:13 PM

To: farcase.2003-029@gsa.gov

cc:

Subject: FAR Case 2003-029

We support the changes suggested by the coalition consisting of NASBP, AIA, AGC, and SAA clarifying requirements for powers of attorney accompanying bid bonds for federal contracts.

Doug Ferris
The Bottrell Insurance Agency, Inc.
601-960-8211 direct
601-960-8247 fax

2003-029-13



PJackson@bottrell.co
m
10/19/2004 09:29 AM

To: farcase.2003-029@gsa.gov
cc:
Subject: FAR Case 2003-029

We support the changes suggested by the coalition consisting of NASBP, AIA, AGC, and SAA clarifying requirements for powers of attorney accompanying bid bonds for federal contracts.

Peggy Jackson
The Bottrell Insurance Agency, Inc.
601-960-8243 direct
601-960-8247 fax

2003-029-14



"Debbie"
<Debbie@borgesonagency.com>

To: farcase.2003-029@gsa.gov
cc:
Subject: FAR Case 2003-029

10/19/2004 02:25 PM
Please respond to
Debbie

Proposed rule suggested and amendments re powers of attorney per your 10/18 email appears very logical and reasonable. Trust the Feds accept this.

Thanks to all involved for their good work on this.

A. Bruce Borgeson, President

The Borgeson Agency, Inc.
445 Kinderkamack Road
Oradell, NJ 07649

Phone - 201-967-0704



"Don Ardolino"
<donardolino@cjthomas.com>

10/19/2004 12:11 PM

To: farcase.2003-029@gsa.gov
cc:
Subject: FAR Case 2003-029

2003-019-15

Gentlemen:

As an independent agent representing construction contractors, we are pleased to support the language changes in the captioned rule as proposed by the coalition of the National Association of surety Bond Producers (NASBP), The Surety Association of America (SAA), the Associated General Contractors of America (AGC) and the American Insurance Association (AIA) to clarify the proposed captioned rule.

This would clarify the use of acceptable methods of bond execution, without the unwieldy use of "wet" powers, at the time of the bid and allow the GSA to address the validity of powers of attorney after the bid.

Thank you.

Sincerely,

Don K. Ardolino

J. D. Kutter Insurance Associates

800 St. Louis Union Station

St. Louis, MO 63103

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2003-029/6



CASurety@aol.com

10/19/2004 10:45 AM

To: farcase.2003-029@gsa.gov
cc:
Subject: Power of Attorney

I wish to disclose my support for the changes listed in the August 23, 2004 issue of the Federal Register. The current regulations relating to Powers of Attorney continue to be a problem for our small and minority contractor clients.

I urge you to adopt the language supported by the coalition of NASBP, AGC, SAA, and AIA.

Thank you,

Steve Schutze
C.A.Schutze Agency
Austin Texas

2003-029-17



Wyborski.Larry@epam
ail.epa.gov

10/19/2004 10:34 AM

To: farcase.2003-029@gsa.gov
cc: Humphries.Daniel@epamail.epa.gov
Subject: FAR Case 2003-029

EPA has the following comment on proposed changes to FAR 28.101-3 regarding Powers of Attorney for Bid Bonds:

Currently, there is no standard for the authentication of a power of attorney accompanying a bid bond. To determine the authenticity of the accompanying power of attorney, the rule should establish a uniform standard for the formation of a power of attorney accompanying a bid bond. The proposed rule does establish that the power of attorney may be submitted in the form of a photocopy or facsimile. However, there needs to be an established standard for assisting in the determination of the authenticity of the power of attorney while still allowing for the use of a photocopy or facsimile.

In order to establish a uniform standard, the following is suggested:

- i. That a uniform standard for "power of attorney" be set forth in FAR 2.101 (Definitions);
- ii. That the uniform standard for the document titled "power of attorney" require notarized signatures, as well as the addresses and telephone numbers of the signers, including the notary, in order to authenticate the power of attorney;
- iii. That the new definition of "power of attorney" with the established standard be referenced within 28.101-3(b).

If you have further questions contact Larry Wyborski at (202) 564-4369.

2003-029-18



"Jackson,Diane M"
<DMJACKSO@stpaultr
avelers.com>

To: farcase.2003-029@gsa.gov
cc:
Subject: FAR Case 2003-029

10/19/2004 08:31 PM

I support the changes suggested by the coalition consisting of NASBP, AIA, AGC, and SAA clarifying requirements for powers of attorney accompanying bid bonds for federal contracts.

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The St. Paul Travelers e-mail system made this annotation on 10/19/2004, 08:31:25 PM.

2003-029-19



JTauer@csdz.com

10/19/2004 05:07 PM

To: farcase.2003-029@gsa.gov

cc:

Subject: FAR Case 2003-029

I am writing to offer my support of the recommendations of the coalition of NASBP, SAA, AGC, and AIA to modifications of the proposed rule to clarify requirements for powers of attorney accompanying bid bonds for federal contracts which appeared in the Federal Register Aug. 23, 2004.

The proposed rule permits bidders to submit a photocopy or facsimile of an original power of attorney with their bid instead of "wet" signed powers.

The modifications I support include the elimination of "signed and dated" under (c)(1) and the addition of language (d) to clarify the use of electronic, mechanically-applied and printed signatures, seals and dates.

John Tauer, VP Surety
Cobb Strecker Dunphy & Zimmermann
150 South 5th Street, #2000
Minneapolis, MN 55402
612-349-2401

2003-029-20



**ACharfauros@bottrell.
com**

10/19/2004 04:34 PM

To: farcase.2003-029@gsa.gov
cc:
Subject: FAR Case 2003-029

We support the changes suggested by the coalition consisting of NASBP, AIA, AGC, and SAA clarifying requirements for powers of attorney accompanying bid bonds for federal contracts.

Amanda Charfauros
The Bottrell Insurance Agency, Inc.

2003-029-21

American Insurance Association
1100 Connecticut Ave., N.W.
Washington, DC 20036

Associated General Contractors of America
333 John Carlyle Street
Alexandria, VA 22314

National Association of Surety Bond Producers
5225 Wisconsin Ave., N.W.
Washington, DC 20015

The Surety Association of America
1101 Connecticut Ave., N.W.
Washington, DC 20036

Via Electronic Mail

farcase.2003-029@gsa.gov

General Services Administration
Regulatory Secretariat (V)
1800 F Street, N.W. Room 4035
ATTN: Laurie Duarte
Washington, DC 20405

**Comments on the August 23, 2004, Proposed FAR Amendment on
Powers of Attorney for Bid Bonds; FAR Case 2003-029**

The following comments are submitted by The American Insurance Association (AIA), the Associated General Contractors of America (AGC), the National Association of Surety Bond Producers (NASBP) and The Surety Association of America (SAA).

SAA is a national trade association of companies licensed to write fidelity and surety insurance in the United States. SAA's approximately 500 members are sureties on the vast majority of bonds written in the United States and include virtually all of the surety companies on the Treasury List of companies authorized to become surety on bonds provided to the United States.

NASBP is the international organization of professional surety bond producers and brokers. NASBP represents over 5,000 personnel who specialize in surety bonding, provide performance and payment bonds for the construction industry, and issue other types of surety bonds for guaranteeing performance, such as license and permit bonds.

AGC is the nation's largest and oldest construction trade association, established in 1918 after a request by President Woodrow Wilson. AGC is an organization of more than 30,000 qualified construction contractors and industry-related companies dedicated to skill, integrity, and responsibility. Operating in partnership with its Chapters, AGC provides a full range of services satisfying the needs and concerns of its members, thereby improving the quality of construction and protecting the public interest.

AIA is the leading property-casualty insurance trade organization, representing more than 450 insurers that write more than \$115 billion in premiums each year. AIA member companies offer all types of property - casualty insurance, including surety bonds.

SAA, AGC, AIA and NASBP collectively represent the interests of the contractors, sureties and bond producers directly impacted by the FAR rules on powers of attorney for bid bonds. SAA, AGC, AIA and NASBP (hereinafter collectively referred to as "Commenters") applaud the effort to amend the Federal Acquisition Regulations ("FAR") to bring clarity and uniform guidance on issues related to powers of attorney and agree generally with the intent and the language of the proposed FAR amendment on Powers of Attorney for Bid Bonds published on August 23, 2004 (69 Fed. Reg. 51936).

Commenters submit these comments to clarify the proposed wording and offer additional language to describe an acceptable power of attorney. These clarifications will help assure that low bids are not rejected because of the form or manner of execution of the power of attorney. The proposed rule with Commenters' suggested changes shown by underline and strikeout is as follows:

- (a) Any person signing a bid bond as an attorney-in-fact shall include with the bid bond evidence of authority to bind the surety.
- (b) An original, or a photocopy, or facsimile of an original, power of attorney is sufficient evidence of such authority.
- (c) The contracting officer shall --
 - (1) Treat the failure to provide a ~~signed and dated~~ power of attorney at the time of bid opening as a matter of responsiveness; and
 - (2) Treat questions regarding the authenticity and enforceability of the power of attorney at the time of bid opening as a matter of responsibility. These questions are handled after bid opening.
- (d) For purposes of this section, electronic, mechanically-applied and printed signatures, seals and dates on the power of attorney shall be considered original signatures, seals and dates, without regard to the order in which they were affixed.

I. Commas in Subparagraph (b).

In subparagraph (b), Commenters believe that deleting the comma following "photocopy," and inserting commas after "original" in both places it appears, will clarify that "original" modifies "power of attorney" and that an original, a photocopy of an original, and a facsimile copy of an original are all acceptable ways to establish the attorney-in-fact's authority.

II. Proposed Amendment to Subparagraph (c)(1).

Commenters believe that the intent of paragraph (c) is to avoid the cost to the government of rejecting a low bid with a valid bid bond because of an issue with the format or manner of execution of the power of attorney. Commenters support that intent. If paragraph (c)(1) makes the signature and date of the power of attorney a matter of responsiveness, however, it potentially undercuts this goal. For example, if the attorney-in-fact neglects to fill in the date at the bottom of the power of attorney, the contracting officer should be free to verify that the attorney-in-fact was authorized to act for the surety at the time of

029-4

the bid rather than be forced to reject a low bid. The provision would also pre-empt the aspect of *All Seasons Construction*, B-291166.2 (December 6, 2002) that characterized the date filled in by the attorney-in-fact as an "alteration."

FAR §28.101-4(c)(7) and (8) require that the government waive the fact that the bid bond itself was not signed by the offeror and the fact that the bid bond was erroneously dated or not dated at all.¹ It is incongruous to apply a stricter standard to the power of attorney than to the bid bond, which, after all, is the document evidencing the principal and surety's obligation to the government. The contracting officer should be free to treat any problem with the signature and date of the power of attorney as an issue of responsibility. The government can then gather the facts and make an informed decision. This is certainly what would be done in commercial practice.

In the Background Information published with the proposed FAR amendment on August 23, the Councils noted that the current situation, "may not be in the best interests of the Government . . . If doubt about the power of attorney becomes a matter of responsibility rather than responsiveness, then the surety can confirm whether the attorney-in-fact is actually authorized to represent the company before the contracting officer rejects the bid." Commenters' suggested change to subparagraph (c)(1) is consistent with the Councils' intent to avoid needless rejection of low bids which, in fact, are accompanied by valid bid bonds and powers of attorney.

With "signed and dated" deleted from subparagraph (c)(1), the FAR provision will give the contracting officer clear and unequivocal guidance. The absence of a power of attorney will be a matter of responsiveness necessitating rejection of a nonconforming bid. Any issue with the content or format of the power, however, will be a matter of responsibility on which the contracting officer can obtain additional information. The contracting officer will not have to make judgment calls as to what is an acceptable signature or date, and non-low bidders will not be able to protest based on real or imagined deficiencies in the signature or date.

III. Proposed New Subparagraph (d).

Prior to the General Accounting Office (GAO) decision in *All Seasons Construction*, sureties routinely used printed powers of attorney. In *Hawaiian Dredging Construction Co. v. United States*, 59 Fed. Cl. 305 (Fed. Cl. 2004), the Court held that such a printed power was acceptable. We assume that the intent of the proposed amendment is to validate use of such printed powers as well as photocopies or facsimiles. Since "original" is not defined in the FAR, however, we believe that it would help contracting officers if the FAR provision clarified that a printed power is an original, and a photocopy or facsimile of a printed power is also acceptable.

In commercial practice printed documents with printed signatures and seals are widely accepted as originals. For example, government checks and most corporate checks have

¹ The waiver is not required if the contracting officer determines that acceptance of the bid would be detrimental to the government's interest.

02921

only printed or facsimile signatures, yet they are routinely accepted as originals. The suggested new subparagraph (d) is consistent with such commercial practice and would provide unequivocally that printed or mechanically-applied signatures, dates and seals are acceptable without regard to the order in which they are affixed.²

IV. Conclusion

Commenters appreciate the action of the FAR Council in publishing the proposed amendment to address the serious and expensive problems and uncertainties related to powers of attorney for bid bonds. The published amendment would be a tremendous improvement over the current situation, and commenters urge that a final amendment be published as quickly as possible. For the reasons discussed above, however, Commenters believe that a good amendment can be made even better with the minimal changes suggested.

² In *All Seasons Construction, supra*, the GAO cited as the basis for rejecting a printed power the fact that the contracting officer could not be certain that the printed signatures were created after the remainder of the document. The proposed subparagraph (d) would foreclose a similar mistake in the future.

2003-029-22



"Glenn Yee"
<gyee@hdcc.com>

10/20/2004 03:03 PM

To: farcase.2003-029@gsa.gov
cc:
Subject: FAR Case 2003-029

Dear Sir(s);

Hawaiian Dredging Construction Company, Inc. supports the proposed changes as recommended by the coalition of the National Association of Surety Bond Producers (NASBP), The Surety Association of America (SAA), the Associated General Contractors of America (AGC), and the American Insurance Association (AIA) in regards to Federal Acquisition Regulation (FAR) Councils case 2003-029.

The proposed changes will allow bidders to submit a photocopy or facsimile of an original power of attorney with their bid instead of "wet" signed powers of attorney. The changes will also clarify the acceptability of electronic, mechanically-applied and printed signatures, seals and dates.

Sincerely,

Glenn Yee

Vice President - Finance
Hawaiian Dredging Construction Company, Inc.
614 Kapahulu Ave.
Honolulu, Hawaii 96815

(808) 735-3211
(808) 735-7416 fax

2003-029-23



"Lemm, Barb"
<barbl@wfl-stl.com>
10/20/2004 10:24 AM

To: "farcase.2003-029@gsa.gov" <farcase.2003-029@gsa.gov>
CC:
Subject: FAR Case 2003-029

Gentlemen:

I have been in the surety industry for over 20 years. I have found the requirement of using "wet" powers of attorney to be quite cumbersome in the execution of bid bonds. I have also never understood the requirement, since Federal projects are the only bids we execute that require "wet" powers on the bid bond at the time of execution.

I believe that the NASBP, the Surety Association of America (SAA), the Associated General Contractors of America (AGC), and the American Insurance Association's (AIA) recommendations to allow photocopies or facsimilies of an original power of attorney and revising the wording to delete "signed and dated" is a fair and reasonable recommendation.

I would encourage you to support this change. Questions regarding authenticity and enforceability of a power of attorney should be handled after bid opening, as opposed to bids being rejected as non-responsive at the time of the bid opening.

Sincerely,

Barb Lemm
Account Rep - WELSCH FLATNESS & LUTZ INC.

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2003-029-24



"Lutz, Denny"
<DENNYL@wfl-stl.com
>

To: "farcase.2003-029@gsa.gov" <farcase.2003-029@gsa.gov>
cc: "Bonds" <Bonds@wfl-stl.com>
Subject: FAR Case 2003-029

10/20/2004 10:36 AM

I appreciate the hard work by all involved. I fully support the language proposed by the AGC, SAA, AIA, and the NASBP to FAR on the proposed rule to clarify requirements for powers of attorney accompanying bid bond for federal contracts.

Dennis Lutz

Bond Manager

Welsch, Flatness & Lutz, Inc.

(314) 342-7102

Visit our website at <http://www.wfl-stl.com>

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2003-029-25



"GAIL TONELLI"
<eca1953@bellsouth.net>

To: FARCASE.2003-029@GSA.GOV
CC:
Subject: FAR CASE 2003-029

10/20/2004 09:39 AM

On behalf of the Engineering Contractors Association of South Florida, we wish to support the changes to the rules on acceptable bid bonds including the foregoing addition:

We submit this paragraph be added under Section (c):

(3) When assessing the authenticity and enforceability of the power of attorney, treat a digital, mechanically applied or printed signature(s) and date(s) on the power of attorney as valid.

ECA

Gail Tonelli, Executive Director<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

Engineering Contractors Assoc. of So Fla Inc

Telephone: 954-236-0737 or 305-620-0335

FAX: 954.236.0738

E-mail: ECA1953@bellsouth.net

Website: www.ECASOFLA.ORG

2003-029-26



"John Bustard"
<johnb@KingNeel.com
>

To: farcase.2003-029@gsa.gov
cc:
Subject: FAR Case-003-029

10/21/2004 05:08 AM

As a bond agency handling hundreds of bonds in favor of the US Government every year, King & Neel, Inc. is convinced that the FAR regulations regarding powers of attorney for bonds should be changed/clarified as soon as possible. We fully support the recommendations of AGC, SAA, NASBP and AIA on this issue. The recommendations are reflected in the following language:

- (a) Any person signing a bid bond as an attorney-in-fact shall include with the bid bond evidence of authority to bind the surety.*
- (b) An original, or a photocopy or facsimile of an original, power of attorney is sufficient evidence of such authority.*
- (c) The contracting officer shall --*
 - (1) Treat the failure to provide a ~~signed and dated~~ power of attorney at the time of bid opening as a matter of responsiveness; and*
 - (2) Treat questions regarding the authenticity and enforceability of the power of attorney at the time of bid opening as a matter of responsibility. These questions are handled after bid opening.*
- (d) For purposes of this section, electronic, mechanically-applied and printed signatures, seals and dates on the power of attorney shall be considered original signatures, seals and dates, without regard to the order in which they are affixed.*

2003-029-27



"Jean O'Brien"
<Jobrien@Armitagegroup.com>

To: farcase.2003-029@gsa.gov
cc:
Subject: From Dominick Scotto @ Armitage & Co., Inc. Re: FAR Case 2003-029

10/21/2004 11:26 AM
Please respond to
Jobrien

As a Surety Agent engaged in the Construction Industry (provider of surety bonds) and an active member of the National Association of Surety Bond Producers (NASBP), Surety Association of America (SAA) and Associated General Contractors of America (AGC) we fully support the proposed ruling, captioned above, which permits bidders to submit photocopy or facsimile of original Power of Attorney with the bid documents instead of "Wet" signed Power of Attorney.

We wish to voice our strong support via this E-Mail.

Thank you for your attention to this matter.

Dominick Scotto

2003-029-28



"Brian Driscoll"
<brian@driscollinsurance.com>

To: farcase.2003-029@gsa.gov
cc:
Subject: Case 2003 029

10/21/2004 08:41 AM
Please respond to brian

The language offered by the coalition of NASBP, SAA, AGC and AIA relative to powers of attorney for bid, performance and payment bonds represents a fair and reasonable measure of security for Federal contracts.

2003-029-29



"Gravning, James A"
<JGRAVNIN@stpaultra
velers.com>

10/21/2004 01:41 PM

To: farcase.2003-029@gsa.gov
cc: Frank.Wirt@marsh.com
Subject: ORIGINAL POWERS OF ATTORNEY ACCOMPANYING BIDS BONDS
FOR FEDERAL CONTRACTS

Dear FAR Council Members,

As a 24 year veteran of the surety industry, I agree with the proposed changes discussed below and encourage you to support those changes.

Thanks,

Jim Gravning

NASBP, The Surety Association of America (SAA), the Associated General Contractors of America (AGC), and the American Insurance Association (AIA) have agreed on language to submit to the Federal Acquisition Regulation (FAR) Councils on the proposed rule to clarify requirements for powers of attorney accompanying bid bonds for federal contracts. The proposed rule appeared in the August 23, 2004, issue of the Federal Register.

The coalition of the above-named associations is pleased with the proposed rule, namely that the rule permits bidders to submit a photocopy or facsimile of an original power of attorney with their bid instead of "wet" signed powers of attorney. The coalition, however, is recommending slight changes and offering clarifying language. These changes are to delete the words "signed and dated" in (c)(1) and to add a new subpart (d) to clarify the use of electronic, mechanically-applied and printed signatures, seals and dates. The changes are reflected in the following language:

- (a) Any person signing a bid bond as an attorney-in-fact shall include with the bid bond evidence of authority to bind the surety.*
- (b) An original, or a photocopy or facsimile of an original, power of attorney is sufficient evidence of such authority.*
- (c) The contracting officer shall --*
 - (1) Treat the failure to provide a ~~signed and dated~~ power of attorney at the time of bid opening as a matter of responsiveness; and*
 - (2) Treat questions regarding the authenticity and enforceability of the power of attorney at the time of bid opening as a matter of responsibility. These questions are handled after bid opening.*
- (d) For purposes of this section, electronic, mechanically-applied and printed signatures, seals and dates on the power of attorney shall be considered original signatures, seals and dates, without regard to the order in which they are affixed.***

2003-029-29

Removing the "signed and dated" requirement from the proposed rule makes it apparent that the contracting officer (CO) has clear and unequivocal authority to accept even a questionable power of attorney as "responsive" and address questions about the validity of the power of attorney after the bid.

The new subpart (d) is designed to make sure that the manner and order in which signatures, seals, and dates are affixed to the power of attorney does not result in the rejection of low bids. The language broadly includes as original powers of attorney those documents that are mechanically signed or contain printed or electronic signatures, seals, and dates. Contracting officers will no longer have the discretion to reject a bid on grounds that the power of attorney did not contain a handwritten signature.

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The St. Paul Travelers e-mail system made this annotation on 10/21/2004, 01:41:38 PM.

2003-029-30



"Judy"
<jahardin@hawaii.rr.com>
m>

To: farcase.2003-029@gsa.gov
cc: Frank.Wirt@marsh.com
Subject: FAR Case 2003-029

10/21/2004 02:58 PM

As an Agent and Attorney-In-Fact I support the recommendation that electronic, mechanically-applied and printed signatures, seals and dates on the power of attorney shall be considered original signatures, seals and dates without regard to the order in which they are affixed.

Judy Hardin
Jerry Hay, Inc.
Bond Dept.
Tel. 808-521-1841
Fax: 808-523-7694
jahardin@hawaii.rr.com

2003-029-31



"Cellina"
<cellinau@hawaii.rr.com>
m>

To: farcase.2003-029@gsa.gov
cc: Frank.Wirt@marsh.com
Subject: FAR Case 2003-029

10/21/2004 07:24 PM

I am in favor of the proposed ruling to permit a photocopy or facsimile of an original power of attorney instead of a "wet" signed power of attorney. Copied/facsimile power of attorneys are accepted by all other agencies, it seems that we could be using our time and effort toward more important issues.

Regards,
Cellina Uyeunten
Bond Dept.
(T)808-521-1841
(F)808-523-7694
cellinau@hawaii.rr.com

2003-029-32



"Larry Stubblefield"
<larrys@jwii.com>

10/21/2004 03:36 PM
Please respond to larrys

To: farcase.2003-029@gsa.gov
cc:
Subject: FAR 2003-029



As Member of NASBP, AGC AND SAA and an active Construction Industry Insurance Agency servicing the Federal Construction Contract Sector, we would like to voice our support of the Proposed rule clarifying the requirements for POA for Bid Bonds on Federal construction contracts as they appear in the August 23, 2004 Federal Register.

Larry Stubblefield
Principal
Jack Wolfe Insurance, Inc.

2003-029-33



"Spencer Miller"
<SMiller@schwartzbrothers.com>

To: farcase.2003-029@gsa.gov
CC:
Subject: FAR Case 2003-029

10/22/2004 02:39 PM

I support and ask that you strongly consider the comments for change made by The National Association of Surety Bond Producers, The Surety Association of America, The Associated General Contractors of America and The American Insurance Association as respects the new Power of Attorney Rule.

These changes will allow for a better understanding of their use.

J. Spencer Miller

Schwartz Brothers Insurance Agency

Phone: 312-630-0854

Fax: 312-630-0833

2003-029-34



Ryan_Fernandez@ars.
aon.com

10/22/2004 02:34 PM

To: farcase.2003-029@gsa.gov
cc:
Subject: FAR Case 2003-029 - Comments

To whom it may concern:

I support the proposed change and enthusiastically encourage the adoption of these revisions. It is, in a word, ludicrous to believe that for every single bid, invitation or solicitation for which a bidder's bond is required that the power of attorney which accompanied the bid bond was/is a signed original. There are officers at surety companies today who do nothing but sign such powers (well in advance of any contemplated bid). The significant costs associated with signing and mailing of original powers and officer certifications to give the appearance of authenticity is farcical.

2003-029-35



"Debby Anderson"
<danderson@minardames.com>

To: farcase.2003-029@gsa.gov
CC:
Subject: FAR Case 2003-029

10/22/2004 02:21 PM
Please respond to
danderson

As members of The National Association of Surety Bond Producers (NASBP) and the Associated General Contractors' of America (AGC), our agency supports their recent recommendations concerning powers of attorney accompanying bid bonds for federal contracts. The coalition has accurately and fairly addressed the issues and we agree with the changes they are suggesting.

Debby Anderson
Underwriting Executive
Minard-Ames Insurance Group
4130 E. Van Buren, #350
Phoenix, Az 85008
danderson@minardames.com
602-273-1675 ext. 223
FAX: 273-0212

2003-029-36



steve.fong@ficoh.com

10/22/2004 01:06 PM

To: farcase.2003-029@gsa.gov
cc: Frank.Wirt@marshmc.com
Subject: FAR Case 2003-029

Gentlemen,

The State of Hawaii receives the benefit of significant federal government work.

First Insurance Company of Hawaii, Ltd., as a major surety in Hawaii, is accordingly involved in much of this federal work.

In this connection, First Insurance Company of Hawaii, Ltd. applauds and supports the proposed rule to clarify requirements for powers of attorney accompanying bid bonds for federal contracts; First Insurance also applauds and supports the improved language on the proposed rule as submitted by NASBP, SAA, AGC, and the AIA.

Thank you for this opportunity to share our thoughts with you.

2003-029-37



"Matt Cashion"
<mattc@cashionco.co
m>

To: farcase.2003-029@gsa.gov
CC:
Subject: FAR Case 2003-029

10/22/2004 11:24 AM

I encourage the FAR Councils to adopt the new wording in FAR Case 2003-029 along with the modifications recommended by the American Insurance Association (AIA), the National Association of Surety Bond Producers (NASBP), the Surety Association of America (SAA), and the Associated General Contractors of America (AGC).

Adoption of this language would have two main benefits in my opinion.

First, clarification for Contracting Officers (CO) as to the validity of a bid bond at the time of a bid opening is given. Situations such as *All Seasons* would most likely be avoided allowing faster contract award to the lowest responsible bidder.

The proposed changed to the initial wording, i.e. deletion of "signed and dated" from paragraph (c) (1), allows CO's the ability to accept bids at bid openings as responsive. Post letting determination of a bid bond's validity could be handled as a matter of responsibility in paragraph (c) (2).

The second advantage accrues to the construction industry as a whole, from CO's to contractors, from sureties to their duly appointed agents, and ultimately the taxpayers.

I am an independent agent representing many different surety companies. I live and work in Little Rock, AR. The Power of Attorneys (POA) that have been authorized in my name to service my contracting customers are computer generated forms with mechanically applied corporate signatures. It is my responsibility to insert the appropriate date, and if applicable, apply the corporate crimped seal, thereby giving the POA its final step in becoming a legally binding authoritative document recognized by the issuing surety.

Each surety company has their own POA. Some are simply black printing on basic white paper. Others are more elaborate using watermarks, colored paper, colored ink, and in some cases, sequential numbering (in these cases I must keep a log tracking the date and use of each POA issued to me).

This proposed wording for this rule allows me to effectively serve my customers using the tools given to me by the sureties I represent. Further, contracting officers would have the ability to accept all apparently responsive bids at the time of bid opening and determine their validity (at least from the bid bond perspective) at a later date.

My concerns with the proposed wording are the use of the words "original" and "facsimile". "Original" is not specifically defined by FAR while "facsimile" is defined. If I "fax" a bid bond to a contracting customer and it is included with his submitted bid, that "fax'd" bid bond does not meet the strict definition of "facsimile" per FAR as it was not rendered *directly* to the

029-37

government. Clarification in this area might be helpful if someone were to challenge the validity of a "fax'd" bid bond at a future date.

My concern of the use of "original" might possibly be clarified by a simple addition to subparagraph (d). I suggest that the proposed subparagraph (d) not end as presented, rather, the following wording be appended to the end: "thereby constituting an original power of attorney". This would give clear guidance that the government and the surety industry both recognize that the computer generated powers with mechanically applied signatures referred to in subparagraph (d) are, in fact, "originals".

Thank you for the opportunity to comment on the proposed wording.

Matthew K. Cashion, Jr. CIC CRM

The Cashion Company, Inc.

Little Rock, Arkansas

2003-029-38



"Campbell, James W
(Bond, Bond HO)"
<JamesW.Campbell@t
hehartford.com>

To: "farcase.2003-029@gsa.gov" <farcase.2003-029@gsa.gov>
cc: "Frank Wirt (E-mail)" <frank.wirt@marshmc.com>
Subject: FAR Case 2003-029

10/22/2004 10:49 AM

To Whom it may concern:

The Hartford is very much in favor of changing the FAR regulations that require a wet power. This is a very cumbersome practice, particularly in Hawaii and Alaska where most sureties do not maintain a office. We need to order the original powers from Hartford Conn., then have them shipped to Hawaii or Alaska. Sometimes they do not make on time, which means the Federal Government does not get all of the qualified bids for a project that they should have received.

We see little positive benefit to the Federal Government in continuing this current practice. It does not give much protection against fraud. The Navy's practice of requiring a authenticity letter from the surety on final bonds over \$500,000 gives the Federal Government much more protection from fraud.

Whit Campbell
Northwest Regional Manager
The Hartford
(206) 346-0130

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2003-029-39



"Dixon, Bob"
<bdixon@itpays.com>
10/22/2004 10:30 AM

To: farcase.2003-029@gsa.gov
cc: "Connie Lynch" <clynch@nasbp.org>
Subject: FAR Case 2003-029

Gentlemen:

We are an independent insurance agency which has specialized in working with construction contractor since 1911. Many of our clients bid regularly on government projects and we have provided bonding as required by The Miller Act (40 U.S.C. Section 270a to 270f) since its inception in 1935.

In our opinion FAR Case 2003-029 merely clarifies the original intent of the Act pertaining to the use of Powers of Attorney, and we urge that it be passed.

Please advise if we can provide any further information.

Robert H. Dixon
V. P. Bond Dept Manager
Fisher-Brown, Inc.
850-444-7607
bdixon@itpays.com

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2003-029-40



"Jack Curtin"
<johncurtin@mindspring.com>

10/22/2004 09:45 AM

To: farcase.2003-029@gsa.gov
cc: "CONNIE LYNCH" <clynch@nasbp.org>, "BOB PETRUCELLI"
<petrucelli@agcmass.org>
Subject: FAR Case 2003-029

To whom it may concern.

The National Association of Surety Bond Producers ,of which I am a member ,the Surety Association of America , the Associated General Contractors of America and the American Insurance Association , have submitted language to the Federal Acquisition Regulation Council to clarify the requirements for powers of attorney accompanying bid , performance and payment bonds for Federal contracts.

My colleagues at Curtin International Insurance and Bonding Agency ,Inc as well as those of our clients who do Federal construction work , all concur with the comments offered . As the people who actually provide the bonds and the powers of attorney we understand the need for contracting officers to have assurance that the bonds they receive are indeed legitimate . We are also cognizant of the fact that some contracting officers would be skeptical of the authenticity if it was sent from Mt Ararat on stone tablets. This current episode with wet powers has been time consuming , expensive and unnecessary .

We urge the FAR Council to adopt the rule currently under consideration including the language sought by the trade associations whose members are the ones affected by the ruling that put us into this position on the first place.

Thank you for your consideration

Jack Curtin
Curtin International
Ph 781 863 0044 x101
Fax 781 863 0077

2003-029-41



JStrock@abc.org

10/22/2004 10:20 AM

To: farcase.2003-029@gsa.gov

cc:

Subject: FAR Case 2003-029

Ms. Duarte:

Please accept these comments on behalf of Associated Builders and Contractors, Inc.

Thank you.

John Strock

Policy Manager

Associated Builders & Contractors, Inc.

(ph) 703-812-2037

(fax) 703-812-8202

jstrock@abc.org



BidBondPowerOfAttorney.doc



2003-029-41

October 22, 2004

Laurie Duarte
General Services Administration
Regulatory Secretariat [VR]
1800 F Street, NW, Room 4035
Washington, DC 20405

Dear Ms. Duarte:

Associated Builders and Contractors, Inc. (ABC), a national trade association representing over 23,000 construction contractors, subcontractors, suppliers, and related firms, appreciates this opportunity to comment on the Federal Acquisition Regulation Case 2003-029, Powers of Attorney for Bid Bonds.

ABC wholly supports this proposed rule. We further recommend the Agency adopt modern forms of signature in addition to facsimiles. These would include digital, mechanically applied and printed signatures.

Thank you for taking the time to review our concerns. We hope that our comments will be considered throughout the rulemaking process. Please let me know if you have questions or need more information.

Sincerely,

John Strock
Policy Manager

2003-029-42



"Steven Shinohara"
<stevens@pixi.com>

10/22/2004 08:00 PM

To: farcase.2003-029@gsa.gov
cc:
Subject: FAR Case 2003-029

To Whom It May Concern:

Hart & Shinohara LLP, as a surety bond agency and myself, Steven Shinohara, as Partner are in full support of the referenced proposal which allows for bid bonds to be attached with photocopy or facsimile of an original power of attorney instead of the strict requirement that only allows "wet" or original signature power of attorney forms.

Moreover, we are in full support of a submitted change to section(c)(1) which deletes the words "signed and dated" and adds a new subsection (d) to clarify the use of electronic, mechanically-applied and printed signatures, seals, and dates.

These changes will facilitate the process of executing and issuance of surety bonds while still protecting the performance and payment bond coverage afforded the obligee (federal government).

Thank you for your attention

Steven Shinohara
Partner
Hart & Shinohara, LLP

2003-029-43



"Rich Pratt"
<rpratt@iwins.com>
10/22/2004 07:04 PM

To: farcase.2003-029@gsa.gov
cc: clynch@nasbp.org
Subject: FAR Case 2003-029

I would like to comment on the proposed regulations regarding power of attorney. I am in favor of the proposed regulations with one small change as follows:

These changes are to delete the words "signed and dated" in (c)(1) and to add a new subpart (d) to clarify the use of electronic, mechanically-applied and printed signatures, seals and dates. The changes are reflected in the following language:

- a) Any person signing a bid bond as an attorney-in-fact shall include with the bid bond evidence of authority to bind the surety.*
- (b) An original, or a photocopy or facsimile of an original, power of attorney is sufficient evidence of such authority.*
- (c) The contracting officer shall --*
 - (1) Treat the failure to provide a ~~signed and dated~~ power of attorney at the time of bid opening as a matter of responsiveness; and*
 - (2) Treat questions regarding the authenticity and enforceability of the power of attorney at the time of bid opening as a matter of responsibility. These questions are handled after bid opening.*
- (d) For purposes of this section, electronic, mechanically-applied and printed signatures, seals and dates on the power of attorney shall be considered original signatures, seals and dates, without regard to the order in which they are affixed.*

Rich Pratt, CPCU, AAI
Vice President
InterWest Insurance Services, Inc.
3636 American River Drive, 2nd Floor
Sacramento, CA 95864
(916) 609-8317

2003-029-44



"Frances Ishida"
<francesi@gsinsuranc
e.com>

To: farcase.2003-029@gsa.gov
cc: Frank.Wirt@marsh.com
Subject: Original Powers of Attorney to Accompany Bid Bonds

10/22/2004 06:27 PM

Gentlemen:

I am writing in support of the federal government's acceptance of Bid Bonds and Powers of Attorney using electronically, mechanically applied or printed signatures, seals and dates, vs. original signatures on Bid bonds, and Powers of Attorney.

This is the future of the bidding process. With faxes, we improved our processing of information, and we can do more now with e-mails. With the necessary precautions in place, this would be a great asset to all parties involved in the bidding process.

Thank you for your time and consideration.

Fran Ishida (member of the Hawaii Surety Association)

Frances Ishida
Account Executive
Griffing Swan & Lai Insurance Brokers, Inc.
700 Bishop St., Ste. 509
Honolulu, HI 96813

Ph. (808)533-8406
Fax (808)528-3463

2003-029-45



Frank.Wirt@marsh.co
m
10/22/2004 04:32 PM

To: farcase.2003-029@gsa.gov
cc:
Subject: FAR Case 2003-029

To whom it may concern

Marsh, the world's largest insurance broker is very much in favor of changing the FAR regulations to allow for electronic, mechanically-applied and printed signatures in lieu of a "wet power". Please do not hesitate to contact me if I can be of any assistance.

Thank you,

Frank Wirt, AFSB
Assistant Vice President
745 Fort St., Suite 1100
Honolulu, Hawaii 96813
Phone: 808-585-3584
Fax: 808-585-3511
frank.wirt@marsh.com

2003-029-46



Chris.Leach@fullerobri
eninsurance.com

10/22/2004 04:09 PM

To: farcase.2003-029@gsa.gov
cc:
Subject: FAR Case 2003-029

Gentlemen,

My firm, Fuller & O'Brien, Inc., is a member of the National Association of Surety Bond Producers (NASBP). The NASBP, the Surety Association of America (SAA), the Associated General Contractors of America (AGC), and the American Insurance Association (AIA) have submitted language changes to the Federal Acquisition Regulation (FAR) Councils on the proposed rule to clarify requirements for powers of attorney accompanying bid bonds for federal contracts. The members of my firm and I support the proposed power of attorney rule clarification and the language changes per the referenced FAR Case 2003-029. Thank you.

Charles Leach
Fuller & O'Brien, Inc.
75 State St.
Albany, N.Y. 12207